
IN THE
United States Circuit Court of Appeals
FOR THE
NINTH CIRCUIT

CRYSTAL LAUNDRY COM-
PANY, a corporation, and Percy
G. Allen,

Appellants,

vs.

BROWN - MEYER COMPANY, a
corporation,

Appellee.

Appeal from the District Court of the United States
for the District of Oregon.

APPELLANTS' BRIEF.

T. J. GEISLER,
of Counsel for Appellants.

JOSEPH L. ATKINS,
of Counsel for Appellee.

*In the District Court of the United States for the
District of Oregon.*

Crystal Laundry Company, a corporation,
and Percy G. Allen,
Appellants.

vs.

Brown-Meyer Company, a Corporation,
Appellee,

No. 2972

APPELLANTS' BRIEF

This is a companion case of that No. 2971 in this court entitled "Broadway Towel Supply Company et al., appellants, vs. Brown-Meyer Company, appellee."

The same patent is alleged to be infringed as in said other cause, the same defense is interposed, and the same interlocutory decree adjudging infringement presented. The two causes were tried jointly and the same opinion by the trial judge disposed of the issues in both causes.

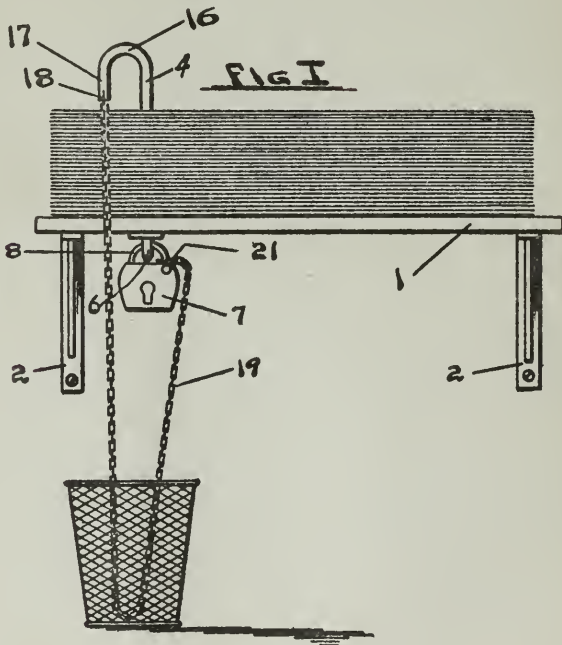
No appeal was taken by appellants from the interlocutory decree because they preferred to present all the questions raised by their defense at one time. So the case went to accounting. Then it was that the circumstances arose in this appeal to be reviewed, and from which appellants seek relief. If the preliminary matters are understood, we may turn immediately to the facts on the questions involved on this appeal, which facts are stated on page 18 of this brief.

For the convenience of the court hearing this appeal, so much of the brief of said companion case as describes the patent in suit and its particular features, and the device first used by appellants and adjudged by the District Court to infringe is here copied in this brief:

THE PATENT IN SUIT is that granted to C. F. Brown November 3, 1914, No. 1,115,895, for a Towel Holder, on an application filed August 13, 1913; and he had assigned his entire interest to the Brown-Meyer Company, the appellee.

A copy of this patent is to be seen in the "Appendix of Documentary Evidence" in the Transcript of Record following page 123.

The following “Fig. 1” from the Brown patent drawing shows the whole idea.





The parts of this device Brown termed as follows: 1, a supporting *shelf*; 2, *brackets* thereof; 4, the *assembling member*, or post, rotatably supported on the shelf 1 and made with a crooked head as at 16. The towels in use are strung on the towel-stringing chain or "*flexible retaining member*" 19, which is secured at its upper end, 18, to the crooked top-end of the assembling member 4, and is provided at its lower end with an *eyelet* 21 by which it is fixed on the *shackle* 8 of the *padlock* 7.

The questions propounded require no extensive examination of the record of this cause.

Both appellants and appellee conduct laundries in the city of Portland, and are particularly engaged in furnishing towels for use in the lavatories of public buildings, and other places.

For sanitary reasons the idea had been conceived of supplying individual towels in public places. In the city of Portland such was required by an ordinance.

Experience showed that if the individual towels were supplied loose, a considerable number would be lost. Hence inventors sought to provide a towel-rack which would allow a fairly convenient use of the towels, but at the same time tie them in place.

As far as the record shows, the subject had received the attention of inventors since 1896.

Brown adopted bodily a prior patented device (as will presently be shown) to which he added a functional improvement.

The appellee used its device publicly for some time prior to the issuance of said Brown's patent, and being a fairly convenient device, appellant company adopted it, not knowing that it was being patented.

The device which appellants were using on November 3, 1914, is shown by the cut opposite this page.

As well known, Patent Office proceedings are confidential; and of course appellants could not be charged with notice of the Brown patent until its issue November 3, 1914, and the further time required by mail for bringing actual notice to Portland, Oregon.

In fact the first actual notice which appellants had of said patent was a letter received from appellee's attorney in the early part of November, 1914. (Trans. 87, 92.)

Immediately after receiving such letter, Allen, of appellants, called on inventor Brown about the matter, and was referred to the latter's attorney. There were further interviews between Allen and Brown, and his attorney (Trans. 88), but these lead to nothing.

Then appellants consulted an attorney who procured the record, i. e., the "File Wrapper" of the Brown patent. When the File Wrapper had been examined appellants were advised by their counsel that the device they were then using infringed the Brown patent, but such infringement could be avoided by changing the arrangement of the towel-stringing chain; and thereupon appellant's device was re-arranged as shown in the following cut:

Note that the lower end of the towel-stringing chain (19) of the Brown device is attached to the lower end of the towel-assembling post (4), while in appellant's rack, *after its change*, above illustrated, the lower end of the chain was permitted to hang down into, and fastened to the bottom of a basket.

Appellants were advised by their counsel that the file wrapper showed a device prior to Brown, invented



by one Reid, which they might follow by making the change stated, and thus avoid infringement of the Brown patent.

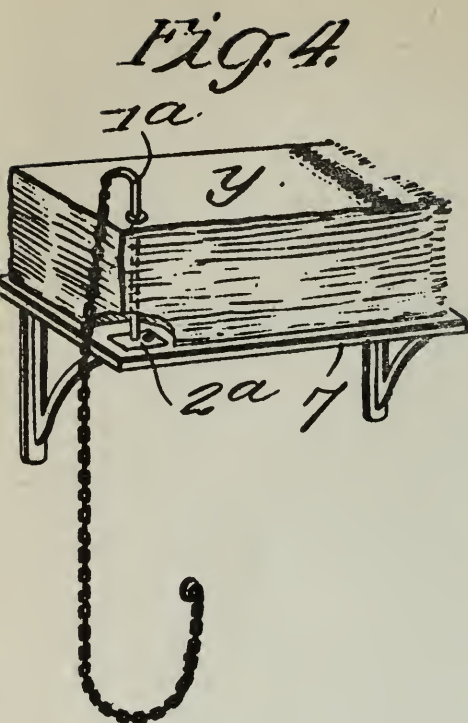
The File Wrapper of Brown's patent disclosed the following facts:

When Brown filed his application, a number of patents had already been issued for towel racks, directed to the same general purpose Brown had in mind; and these patents were cited by the Examiner of the Patent Office in the prosecution of Brown's application. All such patents are contained in said "Appendix of Documentary Evidence," but it is only necessary to deal with a few of them.

The most important—really the progenitor of all the essentials of the Brown device—is the patent of *Guy Reid* issued July 15, 1913, No. 1,067,622, entitled "Combined Towel Holder and Rack."

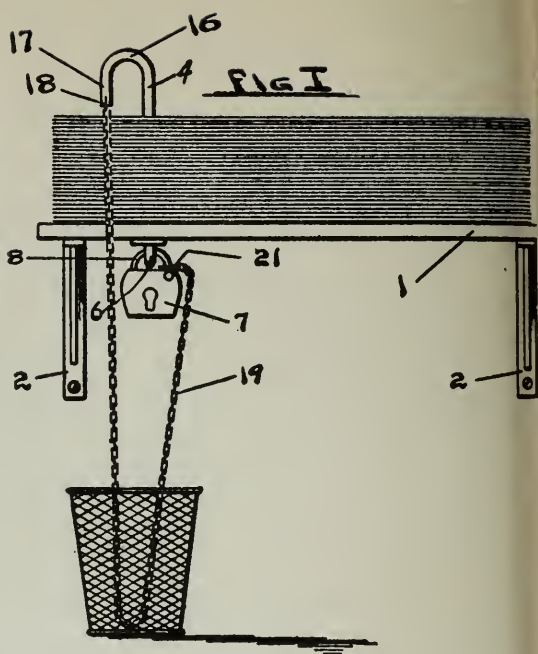
It is to be noted that the application for said Reid patent was filed about a year before the Brown application; and Brown in his amendatory letter of Feb'y. 19, 1914, to the Patent Office (See *File Wrapper*, Trans. p. 104) *admitted that the application on his own improvement was drawn in view of the disclosure of this Reid patent.*

A clear idea of the bearing of the Reid device on the Brown device is readily obtained by placing Fig. 4 of the drawing in the former patent side by side with Fig. 1 of the drawing in the later Brown patent, as here done.



The earlier Reid Device as shown in his patent drawing, Fig. 4.

7 is a shelf on which is mounted a rod 1^a secured to the shelf by a locking device 2^a . y represents the number of towels placed on the rod or towel assembling post 1^a .



The later Brown Device as shown in his patent drawing, Fig. I.

1 is the supporting shelf, 2, the brackets therefor, 4 the assembling member or post, 16 the crooked head of the latter to the dependant end 17 of which the upper end 18 of the chain 19 is attached, the lower end of the chain being provided with an eyelet 21 for fastening on the shackle 8 of the padlock 7.

A parallel statement of excerpts from the printed specifications of these two patents, as here given, will also aid their understanding.

The REID PATENT,
dated July 15, 1913.

* *

“As well known, the surreptitious abstraction of towels in hotels involves a considerable financial loss to the proprietors, and I have devised an improved means for holding and securing towels in toilets and other rooms in such manner as to prevent their removal without interfering with their convenient use. To these ends I provide the towels with metal eyelets and string them on a bar or rod which is supported in, and locked to a fixed support, and to whose outer end a chain is attached, the other end of the latter being secured to a wall staple or ring. The towels are normally held on the bar or

The BROWN PATENT,
dated Nov. 3, 1914.

* *

“My invention relates to towel holders, and has for its object the production of a device for holding and preserving in order an assemblage of clean towels. * * A further object of the invention is to provide means for conveniently withdrawing the towels one by one from the pile, for facilitating the manipulation of it while in use, and for securing it against accidental displacement or intentional or unauthorized removal after use.” (Printed specification Brown patent, lines 9 to 24, page 1.) * * *

“The rigidity of the assembling member (4), which is preferably made a feature thereof, serves to

rod, but may be slid off and down on the pendant chain so as to be conveniently used. The soiled towel hanging on the loose portion of the chain.” (Page 1, lines 8 to 25 of Reid printed specification.) * * *

“When a towel is required for use it is pulled off the bar or rod 1a and drawn down on the chain, * * * and then, after using, it is allowed to fall and descend by gravity * *” (Ib lines 65 to 69, page 1.)

secure the clean towels in place upon the shelf, while the flexibility of the retaining member, constituting as it does in fact a continuous extension of the assembling member, provides for the widest latitude of manipulation of individual towels in use.” (Ib, lines 90 to 98, p. 2.)

The claims in the Brown patent read:

1. In a towel holder or the like, the combination with a supporting member, of an assembling member adapted to secure towels in assemblage upon the supporting member, a flexible retaining member co-operative therewith for the purpose specified, *and means for securing both ends* of said retaining member to the assembling member.

2. In a towel holder or the like, the combination with a supporting member, of an assembling member adapted to secure towels in assemblage upon the supporting member, a flexible retaining member co-operative therewith for the purpose specified, *and means for*

detachably securing both ends of said retaining member together.

3. In a towel holder or the like, the combination with a supporting member provided with a bore, of an assembling member rotatably fixed in said bore, a retaining member flexibly secured at one end of the assembling member, and *means for detachably securing the free end of the retaining member* to the socket end of the assembling member.

4. In a towel holder or the like, the combination with a supporting member provided with a bore, of an assembling member rotatably fixed in said bore, a retaining member flexibly secured at one end to the assembling member, and *means for detachably securing the free end of the retaining member* to the socket end of the assembling member, said means being adapted also to secure the assembling member in its socket.

An examination of the history of this patent, as furnished by the File Wrapper, will show that the novelty in these combinations alone resides in the particular functional arrangement of the towel stringing chain, set forth in such claims, for:

The crooked towel-assembling member—by which a horizontally stacked batch of towels may be lifted up, clear of the supporting shelf—was previously shown in the design patent to J. Rouso, No. 42398, granted April 9, 1912; also in the patent to L. Straub, No. 1,038,984, granted Sept. 17, 1914. The latter also shows the crooked towel-assembling member as *rotatably* supported on a shelf.

And the combination of a shelf, a crooked towel-assembling member or post, and a chain-like or "flexible towel-retaining member" is shown in said patent to G. Reid, No. 1,067,622, granted July 15, 1913. The latter really is the prototype of all the essentials of the Brown device, and differs only therefrom in that it does not have the same functional arrangement of its chain, 5, as the chain, 19, of the Brown device.

When Brown filed his application he made the following *additional claims*, (see File Wrapper, Trans. p. 104) which were *rejected and cancelled*:

1. In a towel holder or the like, the combination with a movable supporting member, of a flexible towel retaining member secured in its entirety thereto.

2. In a towel holder or the like, the combination of a movable supporting member, of a flexible towel-retaining member, and means for detachably securing the latter in its entirety to the former.

5. In a towel holder or the like, the combination with a supporting member, of an assembling member swiveled to the supporting member, and a retaining member co-operative with said assembling member.

6. In a towel holder or the like, the combination with a supporting member, of an assembling member swiveled to the supporting member, and a retaining member carried by said assembling member co-operatively with said supporting member.

7. In a towel holder or the like, the combination with a supporting member provided with a socket, of an

assembling member mounted in said socket, and a retaining member detachably secured to the assembling member.

8. In a towel holder or the like, the combination with a supporting member provided with a socket, of an assembling member mounted therein, a retaining member carried by the assembling member, and common means for securing the retaining member to the assembling member and the assembling member to the supporting member.

11. In a towel holder or the like, the combination with a supporting member, of a towel assembling member provided with a threading point, and means for operatively uniting said members, substantially for the purpose specified.

An analysis of the claims in the Brown patent brings out the fact that each of the combinations set forth in its broadest aspect consists of these elements:

1. A shelf.

2. A post-like "towel assembling member" supported (rotatably or otherwise) by the shelf.

3. A chain or flexible towel-retaining member—this chain being secured at its top end to the towel assembling post.

4. Means (specifically a padlock) for detachably securing the lower end of the chain to the lower end of said post.

In the play of language used in claim 1 of the Brown patent, the padlock is defined as:

"means for securing both ends of said retaining member (chain) to the assembling member (post)."

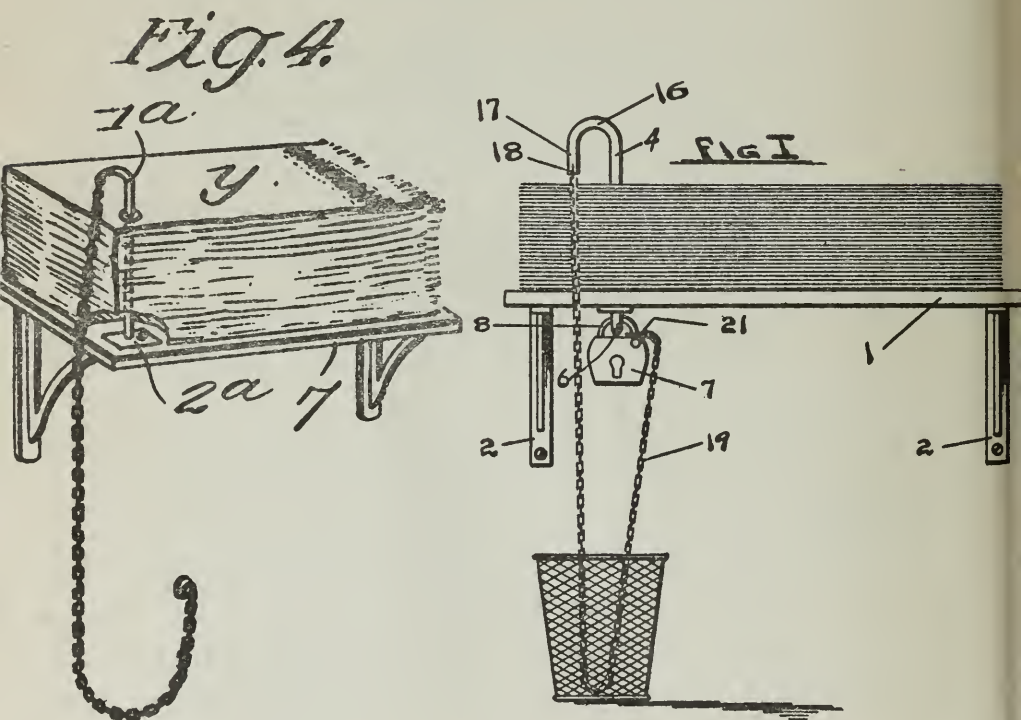
And in claim 2, as:

“means for detachably securing both ends of said retaining member together.”

These latter designations of the Brown chain, with respect to its particular arrangement, is somewhat obscure, but is aided by the explanation contained in Brown's amendatory letter of Feby. 19, 1914, in which he states to the Examiner (Trans. 109) “Let it be noted that in applicant's construction his assembling member (the post) constitutes an elongated link of special function in the retaining member (the chain).”

But we need not bother with this refinement of language and just get down to “brass tacks” as it were.

Here again, for convenience, are given comparative views of the devices patented to Reid and Brown.



And applying the simple process of subtraction of the former from the latter, we see that the substance of the Brown invention is the rearrangement of the towel-stringing chain of the prior Reid patent, so that the lower end thereof is attached to the lower end of the towel-assembling post, directly under the shelf, instead of to a point below the shelf, as in the Reid device.

It is to be noted that Brown tried to secure, but it was denied him, claims not including said particular feature for see said rejected and cancelled claims 5 to 8 and 11 above referred to.

It is further to be noted that in each of the four claims of the Brown patent, *the flexible member—the chain—has a particular FUNCTION ascribed to it.* Thus in claim 1 the particular arrangement of this chain is stated to be “for the purpose specified,” i. e. in the specification, in which we are told (see printed copy of Brown’s patent, p. 2, lines 96 to 98) that it “provides for the widest latitude of manipulation of the individual towels as illustrated in Fig. II of Brown’s patent. In his amendatory letter of July 23, 1914, (Trans. 115) Brown further amplifies this function of the particular arrangement of his chain as follows:

“The combination described in claim 3 (being claim 1 of the patent) defines a special construction and a distinct utility. It is this, in the Reid device, as shown partly in Figure 2, each individual towel must be used in close proximity to the other towels, clean and soiled, upon the holder. Of course, it may be said that this situation may be relieved by increase of length of chain.

But this does not meet the situation. To increase the length of chain beyond certain limits is impracticable, would tend to defeat the purpose of the device, in the kinking of the chain, for example. Applicant has devised means for obtaining the maximum availability of each individual towel in use without impairment of the certainty of operation of the device."

From the foregoing analytic examination of Brown's patent, it is obvious that the margin of patentability of his alleged improvement over the prior Reid device was exceedingly small.

But appellants did not concern themselves with that question. True, they did not want to be deprived of their rights, yet they decided to avoid infringement of whatever patent appellee had. They promptly changed their device, as mentioned, and offered to settle on any reasonable basis for the month's prior infringement (Trans. 85, 88).

Referring again to the arrangement and operation of appellant's device, after changed as above illustrated, it is to be noted that this device did not then embody the crucial and dominant element of the Brown patent, for *it did not embody a chain—or flexible retaining member as Brown terms it—having both ends secured to the towel assembling post.* And appellants contended that they no longer infringed. But appellee disputed appellants' contention; appellee claiming that appellants' device, notwithstanding said changes, still infringed, because it still embodied "*means by which this device MIGHT be rearranged and then used* like the Brown device.

This suit then followed. The evidence taken therein developed the facts above stated.

It was conceded on the trial (Trans. 82), that appellants' device, after its said change, was used only with the lower end of the towel-stringing chain hanging down and fastened to the bottom of the basket, and that the lower end of the chain was not fastened to the lower end of the assembling member, or post.

The District Court in finding in the affirmative on the question of infringement, reached conclusions clearly erroneous, it is submitted, as shown by the following excerpts from its opinion: (Trans. 15, 16, 17.)

“The claims of the complainant's patent, it must be conceded, are subject to narrow construction. * * *”

“The defendants are using a device in practically all respects, as to construction and operation, the same as plaintiff's, except that they attach the lower end of the retaining member or chain to the bottom of a basket inside, and not to the lower end of the assembling member, as does the plaintiff's contrivance.”

“* * * I am not persuaded that the simple means of attaching the chain or retaining member to the bottom of the basket on the inside instead of at the foot of the assembling member, varies the device to such an extent as *to add a new discovery*, or even an old element, to the combination. The complainant's device is so constructed that the basket may be used in connection with it as a depository for the soiled towels. The defendants' device simply makes the basket a depository and merely changes the place of attachment for the lower end of the

chain or retaining member. As an illustration, in the Reid patent, the lower end of the chain is attached to a wall, and yet the patent to complainant's assignor was granted notwithstanding the prior patent of Reid. *Now suppose that the defendant had used the Reid patent and simply detached the chain from the wall and attached it to the bottom of the basket and used the basket as a depository for the towels, could any one say that such change constituted an added discovery or new element to the Reid patent?* The Reid retaining member could have been used by elongating the chain so as to drop the sag into a basket and thereby bring the basket into play as a depository as the complainant uses a basket."

"Thus I cannot conceive that the detachment from the lower end of the assembling member in the Brown patent and attaching it to the bottom of the basket or depository is the adding of a new element or discovery to the defendants' device, and am impressed that the alleged new device is merely colorable and without potent variation such as will avoid infringement."

Manifestly the defense of appellants was erroneously conceived by the lower court, and it is not controlled by any such rule of law as suggested by the opinion.

The defense of infringement in the Answer was stated as follows: (Trans. p. 9, 10, 11)

"That the alleged invention of said Charles F. Brown related to towel holders designed for supplying individual towels to users, and that this was a well and highly developed art before said Brown entered into the field,

with his said alleged improvement, as is shown by the following patents: (here are stated the patents cited by the Patent Office against Brown's application as originally presented.)

"That, therefore, the alleged improvement of said Brown, if it did constitute an invention, was of a very specific and limited character, and must be construed accordingly in order not to encroach upon the rights which were vested in the general public prior to, and at the time said Brown entered said field."

"That the defendants admit that they made and used a few towel holders embodying the features set forth in said claims of said alleged letters patent, but such making occurred some time before said letters patent were issued, and before the defendants had any knowledge of said Brown's alleged invention, or that said letters patent were to be issued therefor; and immediately after the defendants were informed of said letters patent, they notified the plaintiff that they would discontinue the use of towel holders embodying features covered by said letters patent; and did thereupon proceed immediately to change over their said towel holders so that same would, and did, not infringe upon said letters patent."

The change so referred to was the arranging of the towel stringing chain in the same manner as shown in said patent to Reid, which was prior to Brown's invention, and which appellants had as much right to use as appellee.

While in the midst of the accounting, appellee suddenly summoned appellants back into court to show cause why they should not be punished as for contempt, for the reason that after the entry of the interlocutory decree and service of the same, appellants have continued "to use devices * * * embodying the invention * * * which was enjoined * * * being of a form modified in certain immaterial details * * * and *which appears to be*, nevertheless, clearly covered by *the terms* of the patent sued on, as determined in the decree aforesaid."

This motion was based on the affidavits of R. P. Meyer, an officer of appellee corporation and George T. Brown, also an officer of said corporation, and the inventor of the patent in suit. Meyer in substance stated (Trans. p. 21) with regard to the device alleged to infringe, that the same was "*of a form modified in certain details* which he is advised and believes to be immaterial and to be covered nevertheless by the terms of the patent sued on in said suit." Brown stated (Trans. 23) the exact same facts alleged by Meyer.

The charge was also made that appellants used some towel racks which were identical with the Brown patent claims.

The appellants answered admitting "that a single towel rack of the kind held by the court to be an infringement of the patent in suit, was inadvertently left by (them) in the hands of Meier & Frank Co. * * *"
That before the injunction had been issued positive in-

structions had been given to remove all said towel racks, but this single one had inadvertently been overlooked.

“That there are no other towel racks used by defendants’ corporation which resemble the towel rack held to be an infringement. That defendants have offered plaintiff unqualified opportunity to inspect all their towel racks, and have informed complainant of the location thereof. That defendants have endeavored faithfully to respect the order of this court in the premises, and will at all times continue so to do.”

“That complainant did not call the existence of said single towel rack to the attention of defendants, otherwise than by said contempt proceedings, notwithstanding that complainant and defendants were in daily conference for some time past in making up a statement for the use of the Master in the accounting proceedings. That immediately upon having said single rack called to defendants’ attention, the same was instantly removed. That furthermore, in the accounting proceedings it was agreed between complainant and defendants that all towel racks now in use by defendants, other than roller towels, should be tabulated, so that all questions which concern the premises can be submitted to the master. That complainant has stated to defendants that they will base the recovery which they claim to be entitled to on the number of used towels and not on the number of racks in use, and defendants have given complainant a full and true statement of the number of towels.”

“Therefore, complainant has not suffered any loss by said inadvertent use of said overlooked towel rack,

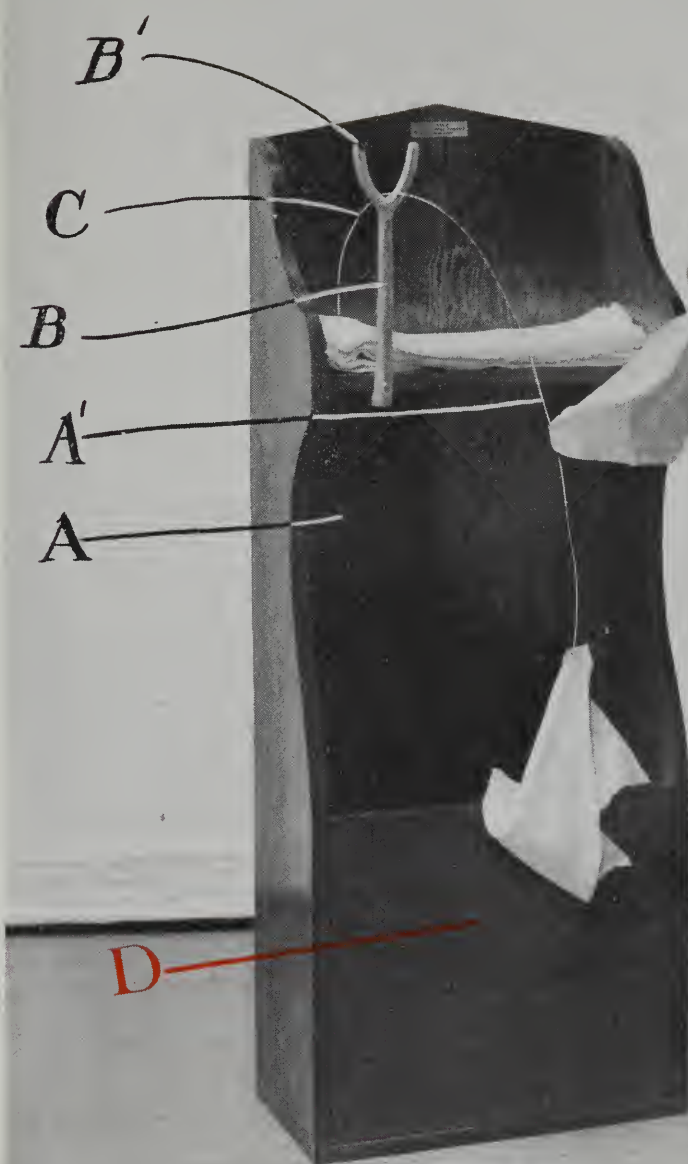
but have a full account, and will have full recovery on all towels in accordance with what may be the final determinations of the court in the premises.”

The District Court condoned the inadvertent acts of appellants with regard to said single towel rack (see supplemental decree, fifth paragraph, Trans. 30) overlooked by appellants and that disposed of that question.

But the main purpose of appellee’s motion for contempt was to obtain a supplemental decree adjudging a *modified towel rack* adopted by appellants after the interlocutory decree to be also an infringement of the Brown patent.

The towel rack complained of is shown in the following cut of a photograph of that device which was presented before the court. And for comparison here is again given a view of the Brown patent as shown by Figure 1 of his patent drawings.

Note that there was no positive charge on the part of appellee that the Ammann device infringed the Brown patent. All that was stated in the affidavit of Meyers and Brown (Trans. 21, 23) was that they were advised and believed that the Ammann device is covered by the terms of the patent sued on. Other than these affidavits there was no ~~other~~ proof submitted on behalf of appellee. (See Order and Motion of appellants to vacate supplemental decree, Trans. 57.)



A, the case; A', a shelf; B, post mounted thereon having forked upper end B'; C, a wire having its upper end led through the shelf A' and fastened on the under side of the latter to a sort of snap hook, the lower end of the wire C being fastened to a sort of snap hook in the bottom portion D.

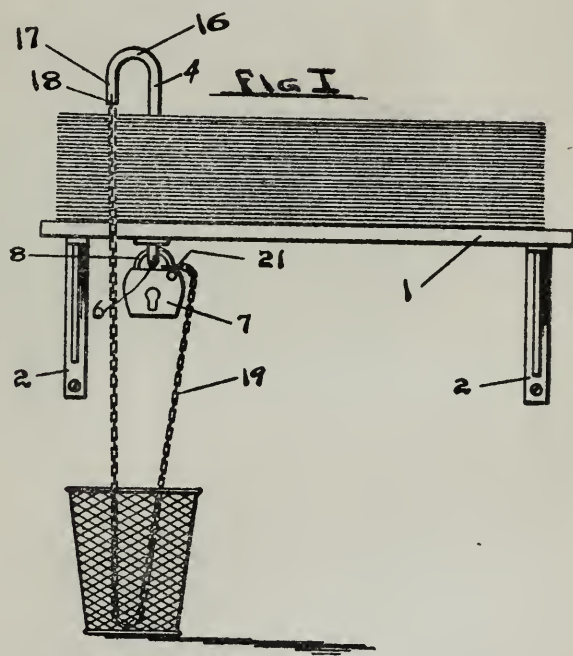


FIG. 1 OF BROWN PATENT DRAWING

The court, from a mere comparison of the two devices, adjudged infringement by said other device of the Brown patent, also entered the following supplemental decree:

“SUPPLEMENTAL DECREE.

This 21st day of March, A. D. 1916, this cause coming on to be heard before the Honorable Charles W. Wolverton, District Judge, on certain affidavits filed herein charging defendants with contempt for violation of the injunction heretofore granted in this cause, both parties being represented by counsel present. And the Court having heard argument of counsel for both parties and having considered said affidavits, and also the modified device admitted by the defendants to have been used by them and complained of by plaintiff as constituting a continuing infringement since the decree made in this cause of the patent in suit, said device comprising a shelf, a wire towel retaining member, snap hooks secured to opposite ends of said member and adapted to secure said member to the shelf, and a staff or supporter on the shelf for supporting a portion of said member above the shelf,

“Now, therefore, upon consideration thereof it is ordered, adjudged and decree as follows:

“First. That the aforesaid modified device infringes upon the patent in suit, to-wit: United States Letters Patent No. 1,115,895, granted and issued on the 3rd day of November, 1914, to Brown-Meyer Co., assignee of Charles F. Brown.

"Second. That the defendant, Crystal Laundry Co. and Percy G. Allen, in the use, manufacture or sale of said modified device, have infringed and do infringe upon the claims of said Letters Patent, and upon the exclusive rights of the complainant under the same.

"Third. That the special master in this cause, John B. Cleland, shall take into consideration said modified device and report thereon to the court in accordance with the instructions and under the authority of his original appointment to act as Special Master in this cause.

"Fourth. That the manufacture, use, and sale, manufacture, use or sale of said modified device constitutes a violation of the injunction heretofore granted and issued in this cause.

"Fifth. That in respect to said violation of the injunction and in respect also to the violation thereof complained of in the use of one of the identical devices covered by the original decree, the court condones the offense upon the present showing made to the satisfaction of the court that the said use in a single instance of the said identical device covered by the original decree was made unintentionally, and that in all other respects the order of the court will be strictly and fully, without any delay, complied with."

The modified device so adjudged to be in contempt was invented by one Henry A. Ammann, and appellants had a special license from him to use the same in their individual towel service business.

At the hearing of the motion for contempt, appellants had had no opportunity of communicating with Ammann. When they had had that opportunity, they were informed by Ammann that his device antedated the Brown device, and that he was prepared to prove such fact.

Thereupon the appellants moved to vacate said supplemental decree by the following motion: (Trans. 31.)

“And now comes the above named defendants and move the court, on the annexed petition of the above named defendants, verified March 31, 1916, and other papers and exhibits therein referred to, to vacate the supplemental decree entered in this cause on the 21st day of March, 1916, and that thereupon the parties to this suit be required to submit to the court, or to the Master by the court appointed, as the court may deem expedient, all proofs which they may have concerning the particular wire towel rack referred to in said supplemental decree, and with regard to its bearing upon the alleged improvement in towel racks claimed to be covered by the complainant's patent in suit, in order that the court may thereupon take such further proceedings in this cause as to it may seem meet; and that the defendants may have such further and other relief in the premises as may seem just.”

And supported such motion by the following affidavits, which are here at length repeated from the record, because giving the facts in as brief manner as it would be possible to state them: (Trans. 32-45.)

"I, PERCY G. ALLEN, being duly sworn, say that I reside in the City of Portland, State of Oregon, that I am the president of the above named defendant, Crystal Laundry Co., and also one of the defendants, that I was present in the United States District Court at Portland, Oregon, on the 21st day of March, 1916, at the contempt proceedings then being heard before the Hon. Charles E. Wolverton, United States District Judge, on the representations presented to said Judge by the complainants in this suit; and that in such proceedings a certain wire towel rack, of which a photograph is hereto annexed and marked "Exhibit A" and referred to as a part of this affidavit, was presented by complainant's counsel, Joseph L. Atkins, to the court as being an infringement of the towel rack described in the patent in suit, and the claims of the latter; and that in the course of such proceedings said complainant's counsel did point to and state to the court that the construction of the towel rack shown in said Exhibit A was the equivalent of the towel rack described in the patent in suit; that the shelf A' of Exhibit A was the equivalent of the shelf or supporting member of the Brown device covered by the patent in suit; that the post B with its forked end B' was the equivalent of the towel assembling member of the patent in suit; and that the wire C was the equivalent of the flexible retaining member of the patent in suit; and that the means by which the top end of the wire C was secured to the shelf A' was also adapted to have the lower end of the wire C secured thereon, and thus provide means which were equivalent to the means specified in said

Brown patent for securing both ends of the flexible retaining member therein shown in connection with the assembling member. And I also heard the complainant's counsel state as the reason why he considered the wire towel rack shown by Exhibit A to be an infringement of the patent in suit was that the lower end of the wire C could be removed from its point of attachment at the base of the case A and fastened to the same means to which the upper end of the wire is secured in said wire towel rack.

"That I am informed, by an examination of the application for patent made by one Henry A. Ammann, whose application is still pending in the United States Patent Office under Serial No. 864,059, having been filed September 29, 1914, that the said Ammann invented his towel rack prior to June 15, 1913, and at that time did disclose to others his said invention, and built a full-sized towel rack embodying said invention, and that such towel rack was operated in the presence of others, and operated successfully. That the said Henry A. Ammann resides at Spokane, Washington, and I have requested him to make an affidavit of said facts himself, that I expect to receive such affidavit within a few days and when obtained will be served and filed in connection with this, my own, affidavit in the premises.

"That the wire towel rack so invented by said Henry A. Ammann, and described and shown in his application for letters patent, is substantially of the same construction, and also operates in the same manner as the

towel rack presented in court, as aforesaid, and shown by said photo Exhibit A hereto attached."

"I, JOHN A. CLANCY, being first duly sworn, depose and say that I reside in the City of Portland, State of Oregon, that I was present in the United States District Court at Portland, Oregon, on the 21st day of March, 1916, at the time of the hearing of the contempt proceeding referred to in the annexed affidavit of Percy G. Allen, and at said time there was presented before the Hon. Charles E. Wolverton, United States District Judge, who heard said contempt proceeding, a wire towel rack which was later photographed and is represented by the photograph Exhibit A hereto attached; and that I also heard the complainant's counsel, Mr. Joseph L. Atkins, state before the court that he considered said wire towel rack an infringement upon the patent granted to Charles F. Brown, November 3, 1914, being the patent involved in this suit; and I heard the said complainant's counsel compare said wire towel rack with the towel rack described in the patent in suit, and in such description heard said complainant's counsel describe the shelf marked A' in Exhibit A, showing said wire towel rack as being the equivalent of the shelf in the device described in the patent in suit; the forked post B' to be the equivalent of the towel assembling member of the patent in suit; the flexible wire C to be the equivalent of the flexible retaining member of the patent in suit; and the means for fastening the upper end of said wire C to the bottom of the shelf A' being the equivalent of the means provided for

securing the bottom end of the flexible member in the patent in suit."

"I, AMOS BURG, being first duly sworn, say that I reside in the City of Portland, State of Oregon, that I have read the foregoing affidavits of John A. Clancy and Percy G. Allen, that I was present in the United States District Court at Portland, Oregon, on the 21st day of March, 1916, at the time of the hearing of the contempt proceeding before the Hon. Charles E. Wolverton, United States District Judge; that I was also present in court on said day and heard counsel for complainants describe said wire towel rack shown in the accompanying Exhibit A, and that the statements made in said annexed affidavits of John A. Clancy and Percy G. Allen, with respect to what was said by complainant's counsel at that time, with regard to the construction and operation of the wire towel rack shown by said Exhibit A, and its bearing on the device shown in the patent in suit, are in all respects correct as I know of my own knowledge, by reason of being present on said occasion."

"I, WILLIAM C. SCHMITT, being first duly sworn, say that I am a graduate engineer, having given special attention to patent matters for some years past, and am duly admitted to practice before the United States Patent Office. That I am conversant with the reading of the patent drawings and specifications. That I have read what I believe to be a copy of the specification and seen a blue print of the drawings constituting a part of the application for patent filed by Henry A. Ammann for an improvement for towel racks, Septem-

ber 29, 1914, in the United States Patent Office under Serial No. 864,059. That I have also seen the device described in the annexed petition of the above named defendants to be the towel rack shown by Exhibit A hereto attached, and in said petition referred to; that said photograph, Exhibit A, is a photograph of said towel rack, and that said towel rack is the identical device described and shown by said drawings and specification in said application of Ammann.

“That said ‘Exhibit A’ consists of an upright case A, open at the upper part of the front, in which open part is a shelf A’, on which is mounted a post B having a forked upper end B’. A wire C has its upper end led through a shelf A’ and is fastened on the under side of the latter to a sort of snap hook, and the lower end of the wire C is fastened to a sort of snap hook provided in the bottom of the portion D. The towels are strung on the wire C, and in use are brought over the fork and dropped in the receptacle C as illustrated in the photograph.

“That the device shown by Exhibit A is substantially in accordance, both in construction and operation, with the device disclosed by said application for patent of Henry A. Ammann. That included in the copy of the latter’s application shown to me is an affidavit on behalf of said Henry A. Ammann giving a description of a device which he, said Ammann, invented prior to June 15, 1913; and that the description of the device given in said affidavit tallies, in respect to construction and operation, substantially with the description of the invention contained in said application

for patent of said Henry A. Ammann, and also with the construction and operation of said Exhibit A."

"I, VIVIAN FLEXNER, being duly sworn, depose and say that I reside in the City of Portland, State of Oregon; that I am the duly appointed stenographer who is taking the testimony before the Master on the accounting in the above entitled suit, and that on the 30th day of March, 1916, in the hearing before the Master, the following matters were stated by the counsel for the respective parties in my presence:

"Mr. Geisler: The plaintiff's counsel admits that he did contend before the court on the hearing at which the supplemental decree was entered, that the device marked Complainant's Exhibit EE, is an infringement of the patent in suit.

"Mr. Atkins: Complainant's counsel adds that the court considered that, passed upon it and signed the supplemental decree to that effect.

"I do further state that I have examined the photograph hereto attached as Exhibit A, and that such photograph shows the device which was referred to in said statements as Exhibits EE."

"HENRY A. AMMANN, being first duly sworn, doth depose and say, that he is the applicant of finally allowed United States application for patent for improvement in towel racks, filed in the Patent Office, at Washington, D. C., on the 29th day of September, 1914, bearing serial No. 864,059.

"Affiant avers that the aforementioned record in the Patent Office shows that the patent to C. F. Brown,

No. 1,115,895, issued November 3, 1914, and having an application filing date of August 13, 1913, was cited as an anticipatory reference against certain claims of the aforementioned patent application.

“That prior to June 15, 1913, applicant conceived the idea of stringing towels on a flexible line or wire with the towels supported on a shelf and one end of the wire anchored to the shelf and the other end of the wire anchored to the floor, and affiant conceived the idea of a fork-like but entirely open guide for engaging an intermediate portion of the flexible line or wire, and that prior to June 15, 1913, applicant, himself, constructed an actual full size device fully embodying his conception. The said device was constructed in affiant’s barn at 715 East Front Avenue, Spokane, Washington, as he did not desire to disclose the invention to anyone excepting the foreman of his laundry and his bookkeeper, whose names are, respectively, George W. Blood and John Frank Clinton. That when the device was completed it was in all respects according to the attached photograph marked Exhibit A; that in said device, the fork or open guide consisted of an upright board A, nailed to a shelf B, and that the shelf B was fixed to a board C, anchored to the wall in the office as indicated by nails D. In forming the fork, the latter was notched at E to form a guide for the flexible wire F. One end of the flexible wire F extended through a stack of towels G and through the support B where it was anchored at H. The wire extended downwardly and was anchored to the floor at I.

"Affiant avers that the attached photograph is not a photograph of the original device, but is a photograph of a device built in all respects similar to the original device. Although diligent efforts have been made to locate the original device, it has been found impossible to do so by reason of the fact that shortly after the original device was constructed, affiant moved his toilet supply business from the old plant at 715 East Front Avenue, Spokane, Washington, to the new plant at 629-31 Erie Street, Spokane, Washington.

"The original device, precisely in accordance with the attached photograph, was set up by affiant at his old laundry, prior to June 15, 1913, and that the said Blood and Clinton were present at the time, and said device was carefully and exhaustively operated and examined to determine whether or not the towels would remain in stacked order on the shelf in view of the pulls and jerks on the wire incident to the operation of wiping the hands or face, and affiant and each of said parties advanced the towels singly along the wire and over and through the fork guide to determine whether or not the plan and device were feasible. The said Blood and Clinton, and affiant, further examined the towels to determine whether or not the yield of the wire would be sufficient to prevent the formation of enlarged holes in the towels as the same were drawn along the wire and used for wiping purposes, and it was found that the device worked highly successfully.

"The circumstances which caused affiant, and the said Blood and Clinton, to clearly recall the date of first making and using this device, were as follows:

Affiant is secretary and treasurer of the Spokane Toilet Supply Co., of Spokane, Washington, and the said company constructed a new plant at 629-31 Erie Street Spokane, Washington, the building of which was started June 1st, 1913, and affiant was so completely occupied in attending to the construction of this new plant that he was unable to give his attention to the further operation of said invention until after the plant was completed on January 10, 1914.

"Immediately after the business of said company was successfully installed in said new plant on or about the last of January, 1914, affiant engaged a carpenter to construct the actual device shown in the attached photograph in order to show the same to the remaining owner of the company who is permanently located at Seattle, Washington, and who did not see the original device. The device now shown in the photograph is still in the possession of affiant.

"Affiant avers that he has telegraphed to the United States Patent Office an order for a certified copy of his aforementioned application and that the money has been deposited therefor in the United States Government Depository at the Old National Bank, Spokane, Washington, and that the aforementioned averments constitute all that is pertinent for the hearing now before this Honorable Court; and further, affiant avers that said certified copy will show the actual sketch which the Honorable Commissioner of Patents accepted as proof, in lieu of the lost original device, and further, that the certified copy will show the citation of the said Brown patent as a reference against affiant and will

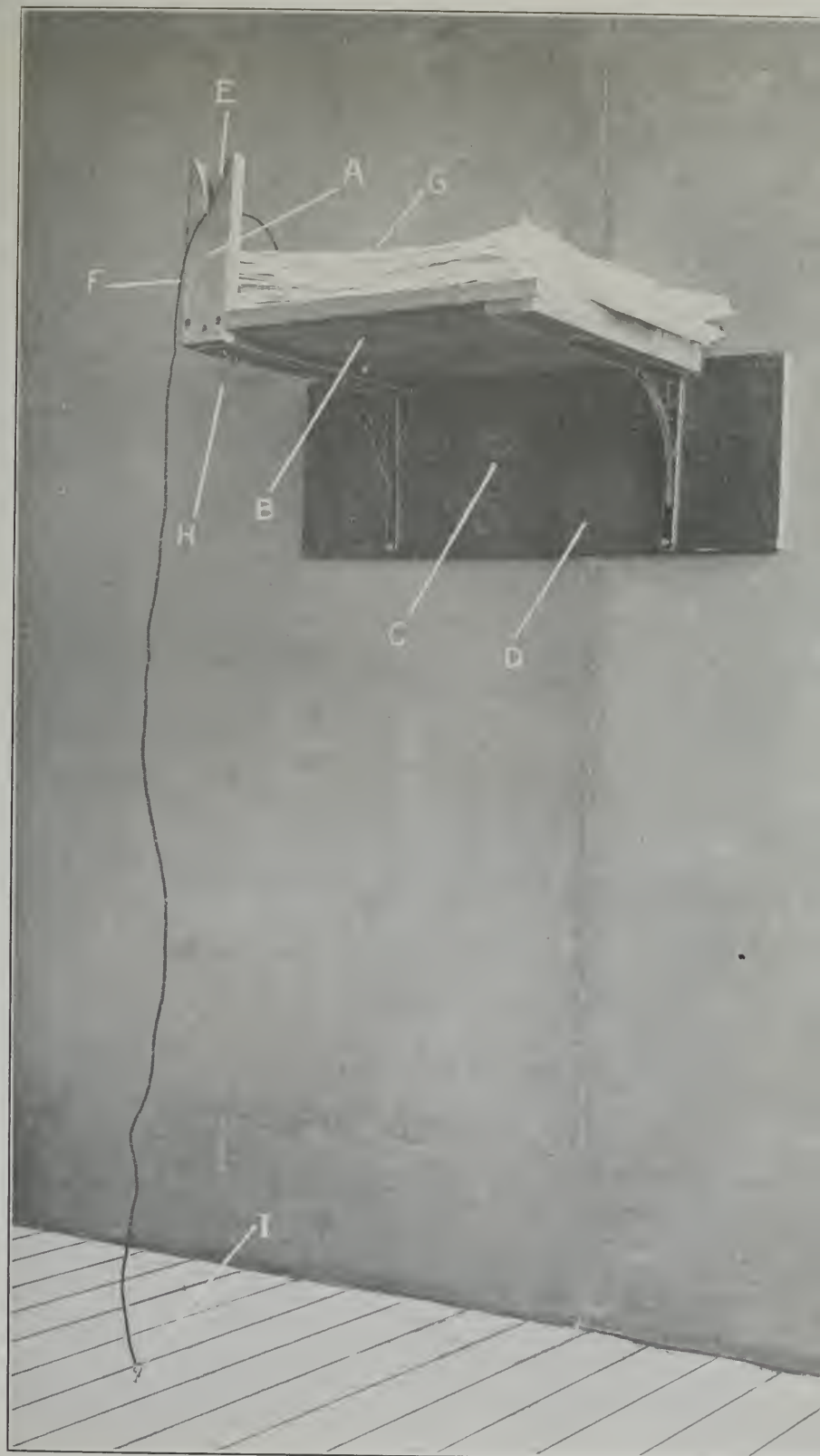
also show the withdrawal, subsequently, of said Brown patent in view of the aforesaid proof, further affiant saith not."

"GEORGE W. BLOOD, being duly sworn, doth depose and say that he knows Henry A. Ammann, and that he has been acting in the capacity of foreman for the above Henry A. Ammann in the Spokane Toilet Supply Company's plant for over three years preceding the date hereof.

"That affiant has carefully read the affidavit of the said Ammann, executed the 8th day of April, 1916, and affiant avers that he was present when the first device was tried out, and that photograph correctly shows the device as installed and tried out in accordance with the said Ammann affidavit; that affiant was also present when the device in the photograph was tried out, and affiant avers that to the best of his knowledge and belief that all of the statements made, and facts described in the said Ammann affidavit are true and correct; further affiant saith not."

"JOHN FRANK CLINTON, being duly sworn, doth depose and say that he knows Henry A. Ammann, and that he has been acting in the capacity of bookkeeper for Henry A. Ammann in the Spokane Toilet Supply Company's plant for over three years preceding the date hereof.

"That affiant has carefully read the affidavit of the said Ammann, executed the 8th day of April, 1916, and affiant avers that he was present when the first device shown in photograph was tried out, and that photograph



correctly shows the device as installed and tried out in accordance with the said Ammann affidavit; that affiant was also present when the device in the photograph was tried out, and affiant avers that to the best of his knowledge and belief that all of the statements made, and facts described in the said Ammann affidavit are true and correct, further affiant saith not."

Applicants also filed a motion for leave to file a supplemental answer, setting up the facts relating to said Ammann device, and also a patent issued to Jacques Roussio dated October 19, 1915, No. 1,157,046, granted on an application filed January 12, 1912; being the same party to whom a design patent was issued April 9, 1912, No. 42,398, cited by the Patent Office against said application for patent of Brown for the patent in suit; that the petition praying leave to file this supplemental answer alleged "that when defendants' answer was filed they had only such knowledge with respect to the state of the art as disclosed by the patents issued in the art."

"That as defendants had only just ascertained, when they filed their answer in this suit, that there were pending in the United States Patent Office two applications for letters patent on behalf of two other inventors, whose inventions were and are prior to the alleged invention of Brown described in the patent in suit, and one of said inventions apparently dominating all types of towel racks of the kind in question. That, therefore, said inventions and the letters patent issued thereon have a material bearing on all issues involved in this cause * * *" (Trans. 48).

“Therefore, defendants prayed for leave to file a supplemental answer herein, alleging the facts above narrated * * * and further prayed that they be permitted to prove the facts above referred to * * * and for such other and further relief in the premises as to the court may seem meet.”

Annexed to the petition was the proposed supplemental answer which set forth the facts referred to in due form. (Trans. 53.)

The court, after considering the matter, denied appellants' motion to vacate said supplemental decree (Trans. 57), also denied their petition for leave to file said supplemental answer (Trans. 58).

Appellants, believing themselves aggrieved, thereupon entered their appeal from said supplemental decree, and also from said order refusing to dissolve the same, assigning as the errors of the District Court in such proceedings the following: (Trans. 59.)

I.

The District Court erred in finding the towel rack (designated on this appeal, Exhibit A) adopted by defendants after the interlocutory decree herein entered January 31, 1916, to be covered by the patent in suit, and extending and continuing the injunction of said decree to said towel rack by the entry of said supplemental decree on March 21, 1916.

II.

The District Court erred in entering the order of April 17, 1916, denying the motion of defendants to

dissolve and vacate said supplemental decree, and in refusing to take all the proofs of the parties either before itself, or the Master, regarding the premises.

III.

The District Court erred in entering said supplemental decree in the course of summary contempt proceedings, notwithstanding the court had previously and in conformity with said interlocutory decree appointed a Master for ascertaining and reporting the use by defendants of the invention covered by the patent in suit, and the proceedings before such Master were pending at the time; and that in consequence defendants were taken by surprise, had no opportunity of presenting their defense, and were deprived of their substantial rights in the premises.

IV.

That the proceedings of the District Court with respect to said towel rack were erroneous, and not in accordance with the usual and better practice of courts of equity in the premises, for it compelled the defendants to defend their rights in the premises piecemeal, and in so doing imposed upon defendants unnecessary and avoidable expense.

V.

That the District Court erred in refusing to permit defendants to prove the undenied facts alleged in the papers on which defendants moved to dissolve and vacate said supplemental decree, and which facts showed that said towel rack anticipated the invention purported

to be covered by the patent in suit; and the District Court's said acts deprived the defendants of their substantial rights in the premises.

VI.

The District Court erred in not finding that, on the undenied facts shown by the papers on which defendants' motion to dissolve said supplemental decree was based, if said towel rack infringes the invention covered by the patent in suit, then, by reason of antedating said alleged invention, said patent is void.

VII.

That the entire proceedings of the District Court in the premises were erroneous and were to the prejudice of the substantial rights of the defendants, and resulted in an improvident use of the powers of said court.

POINTS AND ARGUMENT.

The *first question* to be discussed is—*what is the scope of the Brown patent?* This question having been fully covered in said companion case, the argument and authorities there presented will be copied into this brief to cover this point.

But the questions directly presented *on this appeal* are those predicated upon the *supplemental decree and the refusal of the court to dissolve the same.*

ARGUMENT ON THE SCOPE OF THE BROWN PATENT.

The Brown patent covers only a particular *functional* rearrangement of the prior Reid device. In each of the Brown claims this function is included and governs the particular co-operative arrangement of the towel-assembling post and the towel-stringing chain. This feature it was, Brown stated to the Examiner of the Patent Office, (see file wrapper, Trans. 109) "which in practice corrects the deficiencies of the subject matter of the several references"—among which the Reid patent was the most pertinent.

By this functional arrangement, Brown argued (Trans. 110) he obtained such distinctive advantages over the Reid device as to deserve a patent; and it was this feature alone which persuaded the Examiner to allow the Brown application for patent. Hence, *all claims of the latter were restricted to such particular feature, as above pointed out.*

Therefore under the law of patents, *THE FUNCTION of the elements, in the Brown patent claims, is the basis of their co-operative relationship.*

A patent is a contract between the public and the inventor (2 Rob. on Patents, 70, Sec. 481) and should be construed like any two-sided instrument, so as to get the intent of the grantor (the public) as well as of the grantee (the inventor). *American Roll Gold Leaf Co. vs. Coe Mfg. Co.*, 212 Fed. 720, 724, CCA 1st Cir., citing *McClain v. Ortmyer*, 141 U. S. 419, 424.

On the law governing combination patents, it is said in 1 Rob. on Patents, 385:

“In determining the identity of the combination the investigator meets and is required to answer the four following questions: I, what are its constituent elements; II, what are the essential qualities of each; III, what is the nature of its co-operative law; IV, what are the new intrinsic attributes resulting from the combination of the old.”

At page 388, Sec. 282, it is stated: “The identity of the combination requires identity of elements, of co-operative law, and of essential attributes.” (Page 389) “When *all* the elements are the same, identity depends upon *identity of co-operative law*.” (Page 395) “That unless the co-operative law of two combinations are the same, the combinations are distinct, notwithstanding the identity of their elements.” Citing a list of earlier cases, among them *Pattee v. Moline Plow Co.*, 9 Fed. 821, 834, holding that the “defendant *had the right to combine the same parts* as plaintiff had *so long as he did not use the same combination*.”

In 3 Rob. on Patents, sec. 292, page 95, it is stated: “The infringement of a combination patent therefore consists in the use or sale of any combination in which precisely the same elements, or their equivalents, are united under the same co-operative law. To make or use or sell a combination in which the same elements are definitely combined * * * is not an infringement.”

In *Rich v. Baldwin*, 133 Fed. 920, 923, the court said: “In order to establish the infringement of a mere

improvement of a machine, of former devices already in use for accomplishing the same result, the means must be substantially the same, operate the same way, and accomplish the same result."

In *Kenny Mfg. Co. v. J. L. Mott Iron Wks.*, 137 Fed. 431, 434, the court held that *Where it is shown that the field of invention was exceedingly narrow when the patentee entered it, his claim, in order to be upheld at all, must be limited to the feature shown and described.*

In *American Can Co. v. Hichmartt Asp. Canning Co.*, 137 Fed. 86, 90 (Cal. 1905), Judge Morrow remarked: "To sustain a claim of infringement of a patented machine, three things must be found, first identity of result, second, identity of means, and third, identity of operation."

In *Lieberman's Exe'rs v. Rueell*, 165 Fed. 208, 210, the Court said: "*Where an improvement is narrow in its character, the inventor is ordinarily confined to his specific device, and receives little aid from the doctrine of equivalents.* If he depends upon a single limited feature (as in the case here) the doctrine will not ordinarily be applied so as to cover a device in which that feature does not appear."

In *Electric Protection Co. v. American Bank Protection Co.*, 184 Fed. 916, 923, CCA 8th Cir., the court says: "To sustain the charge of infringement the infringing device must be substantially identical with the one alleged to be infringed in (1) the result attained, (2) the means of attaining that result, and (3) the man-

ner in which the different parts *operate and co-operate* to produce that result. If the devices are substantially different in either of these respects a charge of infringement is not sustained."

In *Kokoma Fence Mach. Co. v. Kinselmans*, 189 U. S. 8, 24, Chief Justice Fuller remarked: "We * * * agree with the (Circuit Ct.) in the conclusion that the machine lacks that identity of means and identity of operation which must be combined with the identity of result in constituting infringement."

In the case at bar, the District Judge said, in his opinion, (Trans. 15) "*The claims of complainant's patent, it must be conceded, are subject to narrow construction.*" "And during the trial, the court remarked (Trans. p. 77) "This is a very narrow issue, you (appellants) claim that you are using more nearly the Reid device than you are the Brown device."

What MIGHT be done with appellants' towel rack is not the question.

Reid *might* have arranged his chain like that of Brown. Indeed, by merely moving the lower end of his towel-stringing chain close to the bottom of the shelf, and there fastening it on the wall, he obtained substantially the same result, with respect to convenient use of towels, as Brown does.

That which infringes if later, will anticipate if earlier. (*Knapp v. Moss*, 150 U. S. 221, 228; *Miller v. Eagle*, 151 U. S. 186, 203.)

That an invention which would not anticipate will not infringe, see *Cook v. Sandusky Tool Co.* (4 Sup.

Ct. Rep. 4; 28 L. Ed. 124; 26 O. G. 1114), where it is stated "If the hoe made * * * infringes the patent of the appellant, it was an anticipation of the invention. * * * If it is not an anticipation, it is not an infringement."

"That a device which, if existent before the making of patented invention, would not anticipate it, cannot, if made after the issue of the patent, be said to infringe it." See *Cleveland v. Chicago*, 135 Fed. 783.

Therefore, *only that which would anticipate, if earlier, will infringe if later.* In other words, *there is BUT ONE STANDARD to apply to the question as to the bearing of WHAT MIGHT BE DONE with one device as compared with another.*

The rule of law which governs this question has been frequently applied on alleged anticipations.

The U. S. Supreme Court decided, in *Topliff v. Topliff*, 145 U. S. 156, 161, "It is not sufficient to constitute an anticipation that the device relied upon *might*, by modification, be made to accomplish the same *function* performed by the patent in question, *if it were not designed* by the maker, nor adapted *nor actually used* for the performance of such function."

In *Dederick v. Cassell*, 9 Fed. 309, the court said: "It will not answer to say the combination required no invention, that any mechanic might have selected the parts and combined them. The same might be said with equal force in almost every instance in which a patent for combination is issued."

This is the rule also recognized by the Court of Appeals of this Circuit, in *Los Alamitos Sugar Co. v. Carroll*, 173 Fed. 280, 284, the court said: "A device which does not operate on the same principle cannot be an anticipation." (page 285) "It is not sufficient to constitute anticipation that a device relied upon what might, by a process of modification, reorganization or combination with each other, be made to accomplish the function performed by the device of the patent sued on."

Since what MIGHT have been done would not bar the granting of a patent, neither will what might be done by the alleged infringer with his device, BUT WHICH HE DID NOT DO, constitute him an infringer.

Counsel for appellee, in the Patent Office, in order to obtain favorable action there asserted the rule (file wrapper, Trans. 115) "*It is scarcely necessary to argue that grounds of rejection of a claim and a defense against infringement are in all respects identical.*"

ARGUMENT ON SUPPLEMENTAL DECREE

(a)

The supplemental decree was improvidently granted and should have been vacated on appellants' motion by the District Court.

This view in the premises is strongly suggested in the disposition by C. C. A. of the 2nd Cir. of a similar question in the case of *Louis Metzger & Co. v. Berlin* 194 Fed. 426.

At the time the supplemental decree was granted, in the case at bar, there was outstanding an injunction, under the interlocutory decree, which was as effective as any to be predicated on said supplemental decree, with respect to restraining the defendants from using any and all devices infringing upon the patent in question. After the accounting had once proceeded, it should not have been interrupted for the purpose of having the District Court summarily, as by the contempt proceedings complained of, pass upon the question of infringement with respect to devices not produced and passed upon at the time of the trial of this cause.

As was said in the case just referred to:

"The Master is bound to pass upon the question of infringement as to all devices brought before him on accounting and when his report is filed the court can review his findings, and all the devices presented to him, which are claimed to infringe, can then be passed upon by the court. And after the final decree an appeal can then be taken to this court, and a review of the findings of the court and master obtained."

This is *the orderly and logical way* of proceeding. *Any other mode is an attempt to dispose of the question of infringement* concerning the different devices *piecemeal*; and indeed the proceedings in the case at bar had the effect of compelling appellants, in defending their rights in the premises, to have each device they were using passed upon separately. Such practice should be disavowed and discountenanced. The supplemental decree should be reversed and vacated "as an improvident exercise of the court's power," as said in the case last referred to.

(b)

But we have not merely to deal with the form of procedure, though even in such the appellants were put to great and unnecessary expense. We have also to deal with the substance in the questions presented. The entry of the supplemental decree was unwarranted on the facts admitted of record, and deprived appellants of their substantial rights in the premises, for appellants were using the Ammann device under a license from the latter. And Ammann, by the affidavit of himself, Blood and Clinton, declared that he had invented his invention PRIOR to that of the Brown device. He also introduced, by photograph, as an exhibit of his affidavit, the very earlier model which he had made, and which is identical in all respects with the device declared by the District Court to be an infringement on the Brown patent claims.

Since, under the well known rule of law, *that which infringes, if subsequent, anticipates if prior, the state-*

ment by *Ammann* under oath, corroborated by his wit-

The prima facie date of an invention shown in a patent in suit is the date of filing of application.

Corbett Bros. Co. vs. Reinhard-Meding Co., 166
Fed. 767, 768.

Electric Controller & Supply Co. vs. Westing-
house Electric & Mfg. Co., 171 Fed. 83, 87, C.
C. A. 6th Cir.

Drewson vs. Hart Paper Mfg. Co., 131 Fed. 734,
739, C. C. A. 6th Cir.

*The patent application of Brown was filed August
13, 1913.*

The affidavits of *Ammann*, Blood and Clinton establish, prima facie, the fact that *Ammann USED*, therefore had completely invented, *his device prior to June 15, 1913.* (Trans. 42.)

Where an anticipatory device is shown to have been *in use prior to the application for a patent, the burden rests upon the patentee to carry the date of his invention back to a time ante-dating such use by satisfactory and convincing proof.*

Torrey et al. vs. Hancock, 184 Fed. 61, 67, C. C.
A. 8th Cir.

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ment by Ammann under oath, corroborated by his witnesses, that he invented his device prior to the *Brown* device, was a challenge to *Brown*, which attacked the very foundation of the latter's claims. Nevertheless this challenge was left unanswered by *Brown*, or appellee. Hence the assertion of Ammann and his witnesses is admitted by the silence of appellee, because the circumstances demanded that the latter should speak.

It was further admitted of record that Ammann was going to obtain a patent on his device, notwithstanding the *Brown* patent, although the latter had at first been cited against his application. This Ammann application has since gone to patent and now exists as a public record; his patent having been granted May 9, 1916, No. 1,181,983, as appellants are prepared to prove by certified copy of this patent, ready to be presented in court on the hearing of this appeal. A printed copy of this patent is included as an appendix to this brief. Such grant to Ammann raised a presumption of there being a substantial difference between the two devices. *Kokomo Fence Co. v. Kitselman*, 109 U. S. 8.

In view of the presumptions of record referred to, in favor of Ammann with regard to the dates of invention, appellee, by convincing the District Court that the Ammann device is an infringement on the later *Brown* patent, at the same time proved **HIS OWN INVENTION VOID** for the Ammann device was invented first.

Appellee's counsel in the District Court solemnly declared the Ammann device to be an infringement of the Brown patent. See Affidavits of Allen, Clancy and Burg, Trans. 32, 34, 36; also statement of appellee's counsel before the Master, Trans. 39.

Indeed it may be said that *appellee having assumed in the District Court a definite position in regard to the bearing of the Ammann and Brown devices upon each other, is now bound and must take the consequences.* And the rule of law so invoked would seem to dispose of the whole question before this appellate court, and require the reversal of the proceedings of the District Court; nevertheless, appellants frankly admit that they cannot agree with the contentions of appellee in the District Court, nor the views of the latter in these matters.

(c)

The Ammann device is not an infringement.

The contention of appellants always has been, and still is, that the Ammann device does not contain the same elements as the Brown device, nor is intended to operate, nor do its elements operate and cooperate as in the Brown device.

Referring to the Brown device, *where in the Ammann device are the elements specified in the combination set forth in claim 1 of the Brown patent? Or where those specified in claims 2 or 3 or 4 of the latter?*

It is well settled that *the omission of an element of a combination, without substituting therefor its clear*

mechanical equivalent, *renders the device non-infringing*. *Acme Truck Co. v. Meredith*, 183 Fed. 124, 127 (C. C. A. 8th Cir.), citing numerous authorities.

In *Eames v. Godfrey*, 1 Wall. (U. S.) 78, 79, it is said, in defining a combination, "the end in view is proposed to be accomplished by the union of *all* arranged and combined together in the manner described; the use of any two of these parts only, or of two combined with a third, which is substantially different in form or in the manner of its arrangement or connection with the others, is therefore not the thing patented. It is not the same combination if it substantially differs from it in any of its parts.

However, this phase of the *law governing patents on combinations* is so elementary that it requires no citation of authorities.

(d)

With regard to the refusal of the District Court to permit appellants to introduce a supplemental defense, while of course discretionary, nevertheless under the circumstances here shown was a grave error.

If the Ammann device had any bearing on the issues triable in the court below, the appellants should have had a fair opportunity to present all those facts which were brought to their knowledge after they had answered the bill in this case, and the case had been tried on the issues so presented.

Bearing in mind that the record shows that the question of alleged infringement of the Ammann de-

vice was not introduced until after the trial of this cause, also that the appellants acquired the use of this Ammann device in good faith, and under the license of its inventor and patentee, it cannot be fair to permit one party summarily to found a new charge, on new matter, and refuse to the other a fair and full opportunity to refute such charge.

In this view surely *the refusal* of the District Court to permit appellants leave to introduce a supplemental answer and proof *was not in accordance with the principle and practice of a court of equity*. Furthermore, appellants should have had the opportunity of pleading and proving the facts concerning the patent issued to Jacques Rousso, October 19, 1915, No. 1,157,046, a public record, a certified copy of which appellants are also prepared to produce in this court on the hearing of this appeal; a printed copy of such patent being included as an appendix to this brief. Note the padlock shown in the drawings of this patent.

The application for the Rousso patent was filed January 12, 1912, more than a year before the application for patent in suit. Therefore, Rousso is presumed to be the earlier inventor. And such presumptions was confirmed by the silence of Brown. All these material facts appellants sought to introduce as soon as they became aware of same; and they should have had a fair opportunity of presenting them by supplemental pleading and proof.

It is submitted that the Seventh Assignment of Error (Trans. 61) is well founded:

“The entire proceedings of the District Court in the premises were erroneous and were to the prejudice of the substantial rights of the defendants * * *”

The supplemental decree, and the order refusing to vacate the same should be reversed, with the instruction of this court in the premises.

Respectfully submitted,

T. J. GEISLER,

Of Counsel for Appellants.

PATENT TO J. ROUSSO
October 19, 1915, No. 1,157,046

1,157,046.

Patented Oct. 19, 1915.
3 SHEETS—SHEET 1.

Fig. 1.

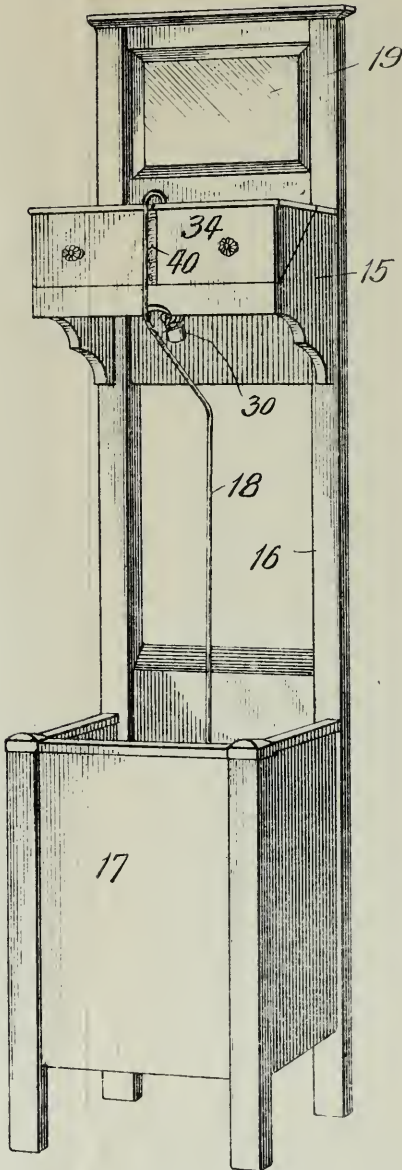
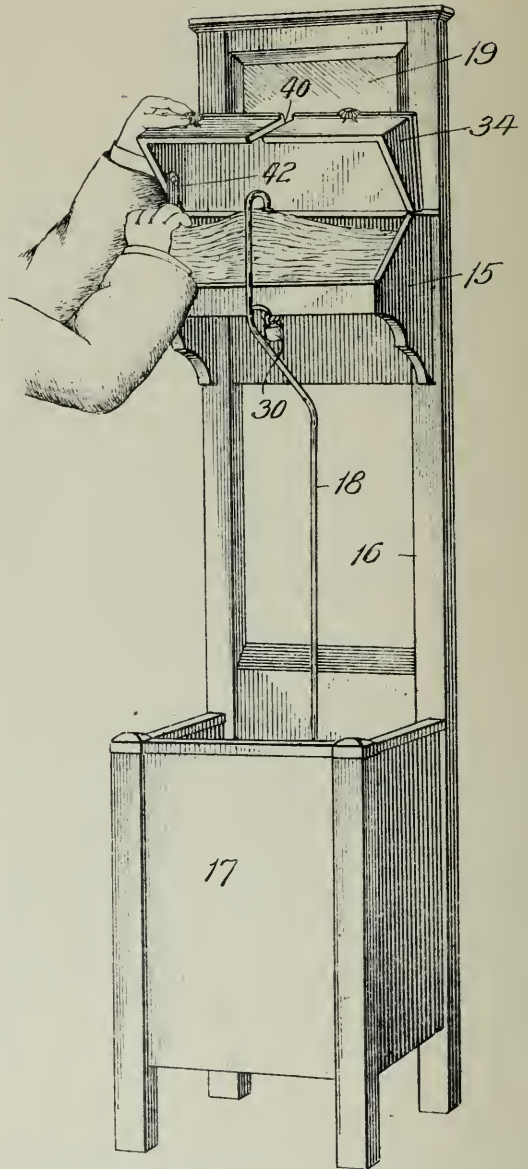


Fig. 2.



Witnesses:

John Enders

Henry A. Parks

Inventor:

Jacques Roussou,

by Sheridan, Wilkinson, Scott & Richmond,
Attys.

1,157,046.

Patented Oct. 19, 1915.
3 SHEETS—SHEET 2.

Fig. 3.

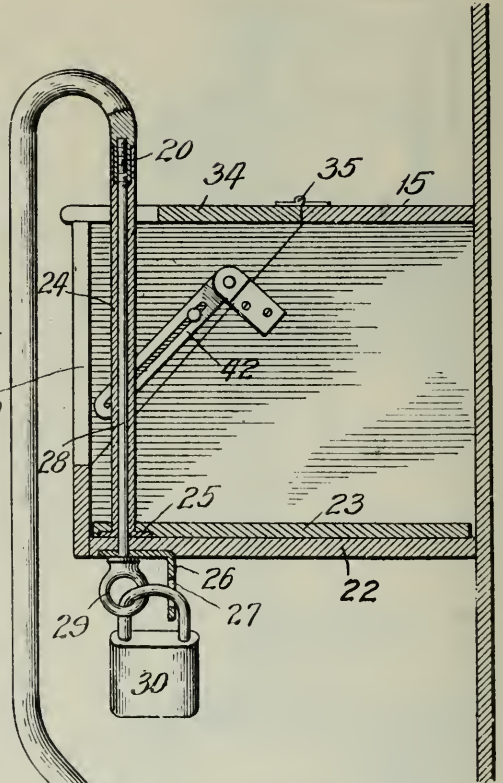
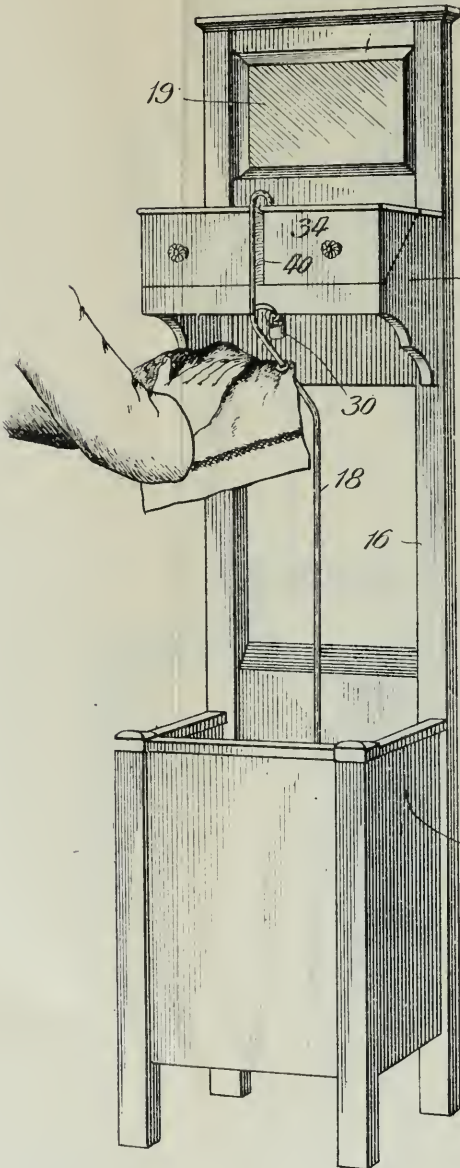
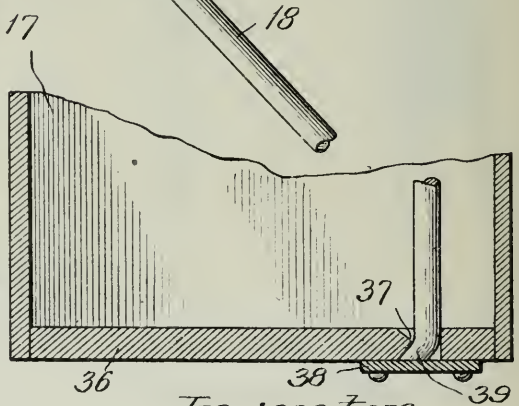


Fig. 4.



Witnesses:

John Enders
Henry A. Parks

Inventor:

Jacques Rouso,
by Sheridan Wilkinson, Scott & Richmond,
Attys.

J. ROUSSO.
TOWEL CABINET.
APPLICATION FILED JAN. 12, 1912.

1,157,046.

Patented Oct. 19, 1915.
3 SHEETS—SHEET 3.

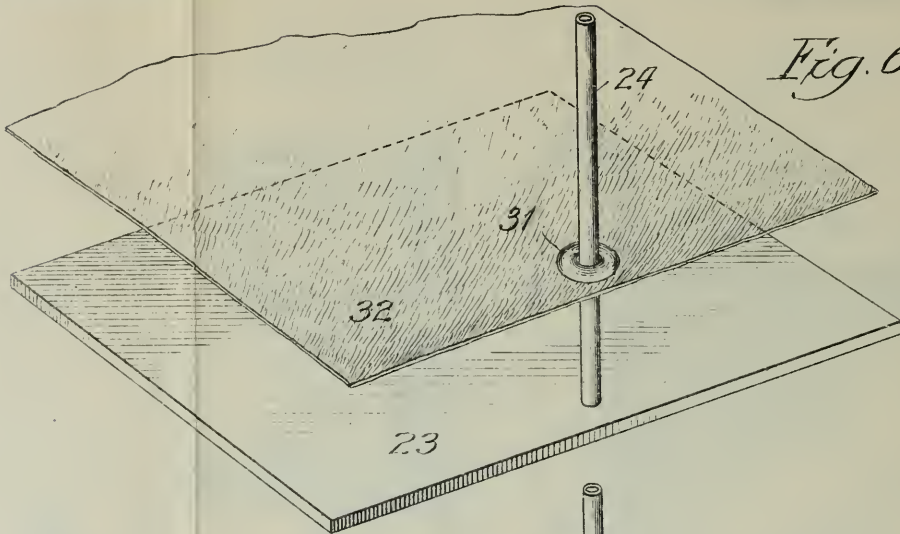


Fig. 6.

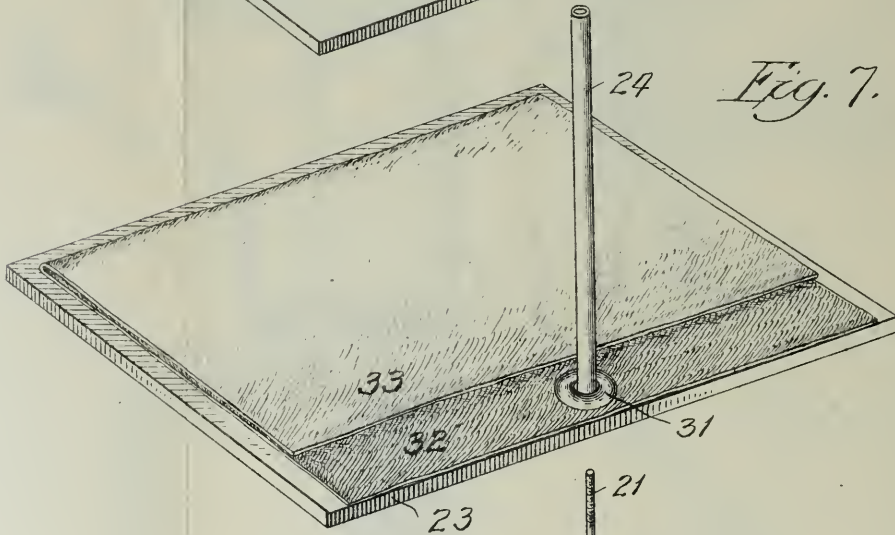


Fig. 7.

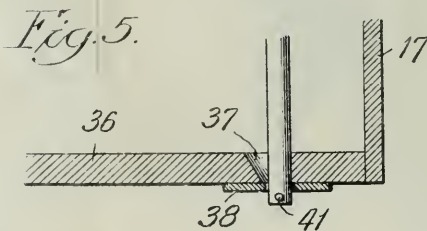


Fig. 5.

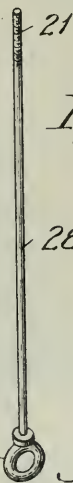


Fig. 8.

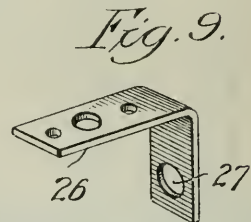


Fig. 9.

Witnesses:
John Enders
Henry A. Parks

Inventor:
Jacques Rouso,
by *Sheridan, Wilkinson, Scott & Richmond,*
Attys.

UNITED STATES PATENT OFFICE.

JACQUES ROUSSO, OF CHICAGO, ILLINOIS.

TOWEL-CABINET.

1,157,046.

Specification of Letters Patent.

Patented Oct. 19, 1915.

Application filed January 12, 1912. Serial No. 870,776.

To all whom it may concern:

Be it known that I, JACQUES ROUSSO, a citizen of the United States, residing at Chicago, in the county of Cook and State of Illinois, have invented certain new and useful Improvements in Towel-Cabinets, of which the following is a specification.

The principal object of my invention is to provide a new and improved device for supplying towels for public use.

Another object of my invention is to provide apparatus by which individual towels can be supplied successively to respective users.

These objects and others will be understood and appreciated, in connection with the following specification and claims, taken with the accompanying drawings.

In these drawings I have shown one specific embodiment of my invention, but the invention itself is defined in the appended claims.

I now proceed to describe this specific embodiment of my invention, and referring to the drawings—Figure 1 is a perspective view of the apparatus in its normal condition. Fig. 2 is a similar view showing the cabinet opened up as it would be for the purpose of taking a towel out for use. Fig. 3 is a similar view showing a towel out in position for use. Fig. 4 is a vertical section. Fig. 5 is a detail sectional view showing a modification. Figs. 6 and 7 are perspective views of a detail element showing a towel in its relation thereto. Fig. 8 is a perspective view of a locking rod. Fig. 9 is a perspective view of a latching element.

The apparatus comprises a box 15 to contain clean towels, standards 16 supporting this box, an open receptacle 17 to receive soiled towels, and a rod 18 on which the towels are at all times strung. Above the box 15 for the clean towels is a mirror 19. The rod 18 has its upper end slightly reduced, as indicated by the reference numeral 20, and a screw threaded socket 21 is formed in this end of the rod 18. On the bottom 22 of the box 15 is a removable pallet 23 carrying an upstanding sleeve 24 securely supported by the bracket plate 25. On the underside of the bottom wall 22 of the box 15 is attached a metal plate 26 with one end bent down and an eye 27 formed therein. The rod 28 has an eye at its lower end designated 29 and its upper end screws into the socket 21. The plate 26 engages

the two eyes 27 and 29 and thus holds the rod 28 from being unscrewed.

Each towel 32 has a gromet 31 around the edges of a hole in one side of the towel and these gromets are strung on the sleeve 24, as shown in Fig. 4. Each towel is folded once, the free edge lying on top of the end carrying the gromet. This free edge of the upper towel is designated 33 in Fig. 1.

The box 15 has a cover 34 hinged at 35 and shown in open position in Fig. 4. The cover 34 is slotted to accommodate the rod 18, as indicated by the reference numeral 40.

The bottom wall of the soiled towel receptacle 17 is designated by the reference numeral 36. This has a hole 37 there-through, one side of the hole being cut away above and below, as indicated in Fig. 4. The hole 37 is closed below by a plate 38. The lower end of the rod 18 is bent forward, as indicated by the reference numeral 39, and in the normal relation of the parts this end 39 of the rod 18 hooks into the under cut-away space of the hole 37.

The alternative construction shown in Fig. 5 simply provides a hinge 41, the axis of this hinge being transverse so that the rod 18 can be rocked forward on this hinge without being lifted up.

In normal condition the parts will be assembled as shown in Figs. 1 and 4 with a considerable number, say fifty, of clean towels piled within the box 15 upon the pallet 23, all these towels being strung with their gromets on the sleeve 24 that stands up from the pallet 23, and each towel being folded with its free end 33 uppermost. A person desiring to use a clean towel will step up in front of the apparatus in a position facing the mirror 19 and with one hand will raise the cover 34 to the position shown in Fig. 2. The extent to which the cover can be raised is limited by the stop 42, so that when he lets go of this cover 34 it will fall back to closed position by its own weight. The cover being raised by one hand, as just stated, the user of the apparatus will reach into the box 15 with his other hand and seize the free edge 33 of the uppermost towel, drawing it up and forward. This will pull the said towel forward to the most forward part of the rod 18, the gromet 31 sliding along on the rod. Then the user will permit the cover 34 to drop back by its own weight to closed position, the towel being in the position shown in Fig. 2 of the draw-

ings. While in this position the towel can be used either on the face or the hands, and finally when the user is through with it he lets go of it and it falls down into the receptacle 17, the gromet 31 all the time sliding along on the rod 18.

If several persons, say two or three persons, desire to use clean towels at the same time, they can do so, one of them standing a little at one side of a position directly in front of the apparatus, and another standing a little at the other side, each one using his individual towel at the same time as the other or others.

As the towels accumulate in the receptacle 17 they remain always strung with their gromets on the rod 18 and the parts being locked in place by the padlock 30, it is impossible for any person to steal any of the towels.

When it is desired to replenish the box 15 with clean towels, this is done by removing the padlock 30, unscrewing the rod 28 and pulling it down and out. Then the upper reduced end 20 of the rod 18 can be sprung up a little out of the sleeve 24 and then the rod 18 can be swung forward. This movement will swing the lower end 39 of the rod 18 back so that it can be lifted up out of the hole 37. Thereupon all the soiled towels in the receptacle 17 will fall off of the lower end of the rod 18 or can readily be pushed off by the hand and removed for cleaning them. At the same time the pallet 23 can be lifted out of the box 15. If desired several pallets 23 may be kept on hand, each one piled up with the proper number of clean towels, and when one is removed, another can be instantly put in its place. Or, if desired, clean towels can be piled up on the removed pallet and it can be put back in the box 15 in the position shown in the drawings.

After the pallet supplied with clean towels has been put back in the box 15, the lower end 39 of the rod 18 is stuck down in the hole 37, then the rod is pushed back and its upper end 30 sprung into the socket in the upper end of the sleeve 28. Then the rod 28 is screwed in place and locked by the padlock 30. This brings the apparatus to normal condition ready for use, as already described.

It will be observed that the socket 37 and the coating end 39 of the rod 18 are so shaped as to prevent rotation of the rod 18 in said socket 37. This prevents swinging the forwardly projecting intermediate part of the rod 18 off to either side of its normal medial position. As an alternative construction the rod 18 may be hinged below, as indicated by 41 in Fig. 5, but in this case the soiled towels have to be removed by sliding them along the rod 18 and off the upper end thereof.

It will be seen that I have provided ap-

paratus by which a supply of clean towels can be kept on hand for instant use, that they may be withdrawn therefrom and used without inconvenience, and that at any stage they are retained by the apparatus and cannot be stolen.

The device as described may be supplemented by coin controlled mechanism, so that its use shall depend on the insertion of a coin in a slot.

I claim:

1. In a device of the class described, a towel support; and a retaining member extending upwardly from said support and then downwardly sufficiently to constitute a suitable guide for a towel while in use, substantially as described.

2. In a device of the class described, an elevated towel support; and a retaining member extending upwardly from said support and then downwardly sufficiently below said support to constitute a suitable guide for a towel while in use, substantially as described.

3. In a device of the class described, an elevated towel support; and a retaining member extending upwardly from said support and then downwardly sufficiently below said support, said retainer being provided below said support with a substantially vertical portion of considerable length to constitute a suitable guide for a towel while in use, substantially as described.

4. In a device of the class described, an elevated towel support; and a retaining member extending upwardly from said support, then outwardly and downwardly sufficiently below said support, then inclined rearwardly and downwardly under said support and then downwardly substantially vertically to constitute a suitable guide for a towel while in use, substantially as described.

5. In a device of the class described, a towel support; and a retaining member extending upwardly from adjacent the outer edge of said support and then downwardly sufficiently to constitute a suitable guide for a towel while in use, substantially as described.

6. In a device of the class described, a towel support; and a retaining member extending upwardly from adjacent the outer edge of said support, then outwardly and downwardly sufficiently below said support, then inclined rearwardly and downwardly under said support and then downwardly substantially vertically to constitute a suitable guide for a towel while in use, substantially as described.

7. In a device of the class described, a stationary support; a readily removable pallet resting on said support and adapted to serve as a carrier for perforated articles; and a retaining member extending upwardly

from said pallet then outwardly beyond and downwardly below said support and adapted to serve as a guide for perforated articles on said pallet; substantially as described.

5 8. In a device of the class described, a stationary support; a readily removable pallet resting on said support and adapted to serve as a carrier for perforated articles; and a retaining member extending upwardly
10 from said pallet, then outwardly beyond and downwardly below said support, said retainer being provided below said support with a substantially vertical portion of considerable length adapted to serve as a guide
15 for perforated articles on said pallet, substantially as described.

9. In a device of the class described, a frame, a shelf supported thereby, a pallet resting on said shelf, and a rod connected to
20 the pallet and extending upwardly therefrom, then forward and then down past the front edge of said shelf, said rod having a detachable joint at a point in the portion thereof that extends up from the pallet.

25 10. In a device of the class described, a frame, a box carried thereby, a rod having one end attached to the bottom of the box within the same near its front and extending
30 thence up then forward then down past the front of the box and back beneath the box, a hinged cover for said box having a notch in its forward edge to accommodate the said rod, and a receptacle underneath the box, the
35 lower end of said rod extending into said receptacle and fastened to the bottom thereof.

11. In a device of the class described, two rectangular boxes supported one above the other, a removable pallet within the upper
40 box, a rod having one end carried by said removable pallet and extending upwardly therefrom, thence forward, down and under the upper box and into the lower box, said
45 rod being jointed at a point directly above its connection with said pallet.

12. In a device of the class described, a clean towel and a soiled towel box, a removable pallet within the clean towel box, a rod

extending upwardly from the upper side of said pallet and thence to the soiled towel
50 box, said rod consisting of a tubular standard with its lower end fixed on said pallet, a solid portion jointed to the upper end of
55 said tubular standard and extending therefrom to the soiled towel box, and a fastening rod extending through the bottom of the clean towel box and through said tubular
standard engaging the proximate end of the solid portion of the rod.

13. A towel dispenser comprising an up-
60 right support, a bracket mounted on said support and adapted to support a pile of towels placed one above another thereon, a locking device carried by said bracket; a rod
65 having a goose-neck formed on its upper end and adapted to engage said locking device, a loose towel-carrying sleeve adapted to telescope with the end of said rod and
70 pass loosely through eyelet holes in a series of towels to facilitate the placing of the towels on said rod, said sleeve normally resting on the support for said towels, the towels
slipping off the upper end of said sleeve as they are lifted from the top of the pile on the shelf, and a hamper provided beneath
75 said bracket and into which the lower end of said rod extends.

14. A towel dispenser comprising a support, a towel-supporting shelf mounted
thereon, a locking device mounted on said
80 shelf, a rod having a goose-neck terminating in a downwardly projecting end that is adapted to overhang said shelf and engage
said locking device, the other end of said rod being inclined inwardly and down-
85 wardly from said goose-neck, and a hamper having an open top wherein the lower end of the downwardly and inwardly inclined
portion of said rod is secured.

In testimony whereof, I have subscribed my name.

JACQUES ROUSSO.

Witnesses:

SAM WOLF,

CARL A. RICHMOND.

PATENT TO HENRY A. AMMANN

May 9, 1916, No. 1,181,983

H. A. AMMANN.
TOWEL RACK.
APPLICATION FILED SEPT. 29, 1914.

1,181,983.

Patented May 9, 1916.

Fig. 1

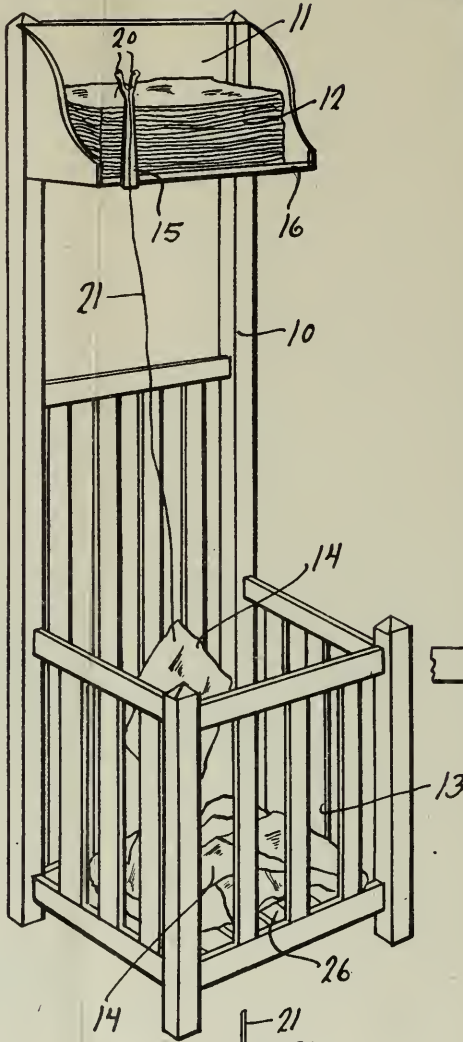


Fig. 2

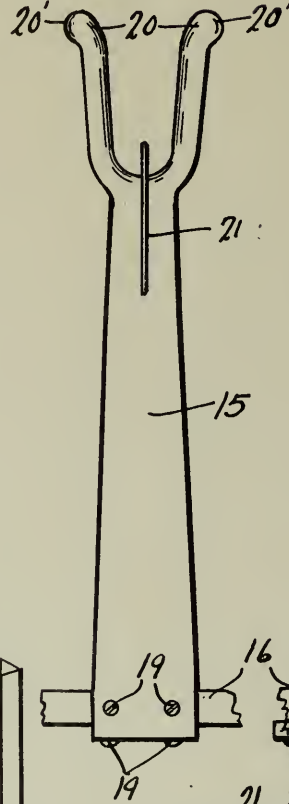


Fig. 3

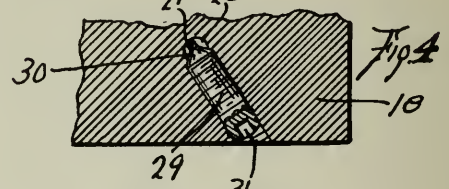
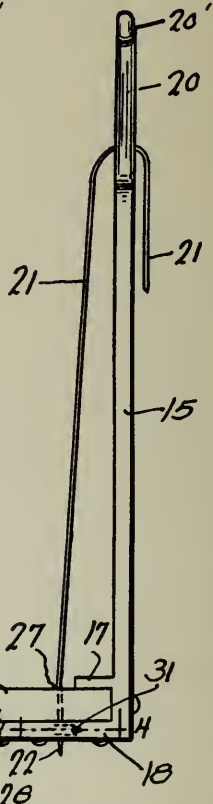


Fig. 5

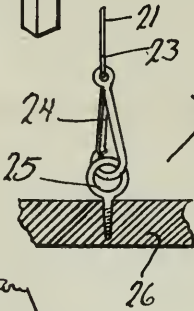
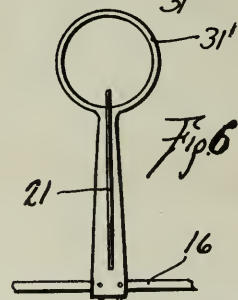


Fig. 6



Witnesses
Harold Beaulieu
Edna Boyles

Inventor
Henry A. Ammann
By
Herbert E. Smith
Attorney

UNITED STATES PATENT OFFICE.

HENRY A. AMMANN, OF SPOKANE, WASHINGTON.

TOWEL-RACK.

1,181,983.

Specification of Letters Patent.

Patented May 9, 1916.

Application filed September 29, 1914. Serial No. 864,059.

To all whom it may concern:

Be it known that I, HENRY A. AMMANN, a citizen of the United States, residing at Spokane, in the county of Spokane and State of Washington, have invented certain new and useful Improvements in Towel-Racks, of which the following is a specification.

This invention relates to improvements in individual towel devices.

In accordance with my invention, a shelf or like support is provided on which clean towels are stacked, and an anchored flexible line or wire extends through the stack of clean towels, and away or downwardly from the latter, in such a manner that the clean towels may be withdrawn from the top of the stack along said flexible line to the desired point of use. In places where a receptacle is employed for the soiled towels, my invention contemplates extending the free end of the flexible line into such receptacle and providing such free end of the line with a suitable enlargement to prevent the soiled towels from stringing off from the free end of the line. It is also within the scope of my invention to anchor the free end of the line adjacent the bottom of the receptacle so that both ends of the line will be anchored, one end being preferably adjustably anchored so as to take up slack to the desired extent. My invention also includes an open guide for supporting an intermediate portion of the flexible line, preferably adjacent the top of the stack of clean towels, to prevent pulls and jerks on the line from shifting the clean towels out of a truly stacked form, and over which open guide the towels may be advanced along the flexible line to the point of use.

It is a special object of my invention to provide an all flexible line or wire on which the towels are strung in order to permit of clean towels being strung on the line or wire at the laundry, and delivered already strung, to the hotel rack or other place of use, thereby avoiding the delay to guests or customers incident to stringing the clean towels on a rod or chain fixed to the towel rack or shelf, at the time the clean towels are installed on the shelf or rack at the place of use. In this feature, my invention clearly distinguishes from such a structure as is shown in the patent to Albert C. Way, dated July 2, 1907, Number 858,931, wherein the rigid rod portions would preclude

delivery of clean towels already strung on the rod for attachment of the rod to the rack when the towels are delivered.

A further and very important object of my invention is to avoid the use of grommets or eyelets which have heretofore been deemed necessary, and I accomplish this object by using imperforate and wholly flexible towels and stringing the same on a line or wire which is also flexible. Thus the flexible line yields when the towel is pulled and jerked incident to use of the towel in wiping the hands and face, thereby preventing the formation of an enlarged hole in the ungrommetted towel which would inevitably result if an initially imperforate towel were strung upon a rigid rod incapable of yielding in response to the jerks and pulls imposed.

Another important feature consists in providing the flexible line with a sharpened pointed end which is readily forced through the imperforate towels to string the latter on the flexible line. Thus the towels coming from the mangle need not be assembled in predetermined order, as is necessary with grommetted towels, to dispose all the grommetted corners of the towels in superposed relation. The time involved in stacking towels is thereby greatly reduced by the use of this invention because the flexible line may be strung through any corner of any one of the towels or at any other point desired.

Further objects and features of the invention will be more fully described in connection with the accompanying drawing and will be more particularly pointed out in and by the appended claims.

In the drawing:—Figure 1 is a perspective view of my improved towel rack and attachment. Fig. 2 is a view in front elevation of one of the features constituting my invention. Fig. 3 is a view in side elevation of the structure shown in Fig. 2. Fig. 4 is a sectional view taken on line 4—4 of Fig. 3. Fig. 5 shows a means for attaching one end of my towel supporting wire. Fig. 6 shows a modified form of my invention.

Like characters of reference designate similar parts throughout the different figures of the drawing.

As illustrated my invention is applied to a rack designated generally at 10 and having compartment 11 for the reception of clean

linen 12 and compartment 13 to receive soiled linen 14.

A standard 15, which is preferably made of metal, is supported on the edge of rack board 16 by lugs 17 and 18 resting above and below 16, respectively. The rack board 16 forms substantially the bottom of the compartment 11. Standard 15 is attached to rack 16 by means of screws such as 19. The upper end of standard or prong 15 is forked as indicated at 20.

The towels 12 and 14 are threaded or strung on wire 21, the end 22 of which is sharpened as shown in Fig. 3. Permanently fastened to one end 23 of wire 21 is the snap hook 24 which is adapted to snap into the screw eye 25, which in turn is screwed into a bottom slat 26 of the compartment 13. The other end of wire 21 passes through the forked end 20 of standard 15 and through a suitable hole in rack board 16 as indicated at 27. Registering with a hole 27 is a hole 28 provided in lug 18, allowing the end 22 of wire 21 to be thrust down into the position shown in Fig. 3. The wire 21 is locked in this position by means of set screw 29, the end 30 of which will bear against 21. Set screw 29 is placed at the angle shown in Fig. 4 in order to be more accessible from the front of the rack. 29 will be operated by means of key wrench (not shown) which will be in the possession of authoritative parties only. The key wrench will fit into the socket 31 provided in the end of screw 29.

The method of supplying the rack and using the towels is as follows: A suitable number of clean towels will first be threaded in any desired manner on wire 21 and slid down until the first one strikes the snap hook 24 which will act as a stop. The long length of free wire remaining will then be wrapped around the bundle of towels to aid in transportation. When an empty rack is to be supplied the loose wire is unwound and end 22 thrust through holes 27 and 28 until it projects below 17 as shown in Fig. 3. The reason for thrusting 22 through so far is to prevent the set screw 29 from marring or otherwise damaging the sharpened point 22. Wire 21 will then be locked in position by set screw 29. The bundle of clean towels will then be slid from the snap hook and to the rack board 16 and wire 21 will be strung over the forked end 20 and the snap hook will be snapped into the screw eye 25. Sufficient slack will be left in wire 21 so that when it is desired to wipe one's hands the towels may be lifted and drawn over the wire 21 so that the corner of the towel may pass between the prongs 20. The slack in 21, however, will not be sufficient to allow wire 21 to be slipped over the ends 20' of 20. After the towel is soiled it is simply dropped and will slide down into section 13.

In the modified form of my invention, as shown in Fig. 6, a ring 31 is substituted for prong 20, the advantage of this construction being that the amount of slack in wire 21 is unlimited since it is impossible for said wire 21 to slip out of the ring. By allowing this additional slack in the wire it is possible to place a greater number of towels on the rack. The ring 31' will be about six inches in diameter so that the hand may be thrust therethrough and the clean towels drawn out.

It is my intention to provide the wires of such quality that they may be used over and over again. Now, while I have shown the wire 21 simply threaded through one corner of the towels it will be understood that I may insert metal eyelets to relieve the strain on the linen. However, I have found by long experience that by the time all four corners of the towels would be worn out by direct application of the wire, the rest of the towel would be unfit for use. Therefore due to the resulting saving in expense, I prefer to wire the towels without the use of eyelets.

It will be understood that I do not wish to be limited to the use of a wire as indicated at 21, as any form of line, such as a flexible cord or chain would perform the function equally well and therefore in the claims I have referred to the wire 21 as a flexible line.

It will be noted that the fork or prong 20 functions broadly as a guide of the open type, and by reason of the fact that it supports an intermediate length of the line or wire 21 adjacent the top of the stack of towels, the topmost towels of the stack may be lifted off and advanced along the line or wire 21, through the open guide, and then lengthwise or downwardly along the depending length of line or wire to the point of use. This guide therefore preserves the towels in stack form irrespective of the manner in which the line or wire 21 is drawn taut by manipulation of the towel resulting from its handling by the user. It will also be noted that the set screw 29 may engage the towel end of the wire or line at any desired point lengthwise thereof so as to thereby lengthen or contract the wire 21 in accordance with the elevation of the towel shelf above the basket, this being possible and also advantageous by reason of the fact that the purveyor of the device may employ a single stock of wire of a single length for towel racks of all sizes. Moreover, this adjustable feature permits of a sufficient slack of the wire to afford freedom of use and also avoid such slack as would result in the wire becoming free from the guide.

Because of the cost of providing the towels with eyelets and by reason of the fact that such metal parts greatly interfere with the process of laundering the towels, it has long been desired to avoid their use entirely in

connection of towels of this character. Furthermore, where eyelets are provided, a great deal of time is lost in stacking clean towels by reason of the fact that it is necessary to dispose the towels in a predetermined order with all of the eyelet corners in one corner of the towel stack. After the towels are stacked, that corner of the stack where the eyelets are located lies at a very material elevation with respect to the remaining corners of the stack because of the increased thickness of the eyelets and therefore the towel stack presents a very unsymmetrical appearance when disposed upon a public rack.

By means of my improved flexible line having a pointed end, I am enabled to use towels which are imperforate because of the fact that the towels are threaded upon the line by projecting the sharp end of the latter through the towels.

I also regard it as a very important feature of my invention to provide a flexible wire which not only functions as an attachment to the towel rack but which permits of the towels being strung and assembled into stack form at the laundry, and transported to the rack without again stringing the towels, the wire performing not only the function of an attaching device but also of a wrapping cord.

Applicant believes that he is the pioneer, in this art, in providing a stringer, which may be a flexible line, together with means coacting with the stringer and the towels strung thereon to hold the towels from unstringing, during transport of said strung towels from the laundry or like point, on the stringer, to a rack. So far as applicant is aware, he is the first to string towels at the laundry, and deliver such clean towels, already strung, for attachment to any desired rack or support at the point of use.

It is believed that the novelty and utility of the device of my invention will be fully understood from the foregoing description and while I have herein shown and described one specific form of my invention I do not wish to be limited thereto except for such limitations as the claims may import.

I claim:—

1. In a means for supporting and dispensing towels, a supporting rack, a fork extending at right angles to and attached to said supporting rack, a wire passing through the crotch of the fork, one end of said wire being sharpened and locked in the lower portion of said fork, and the other end of said wire being snapped to another portion of the supporting rack, substantially as described.

2. In a device of the class described, a towel holding wire, a fork over which said wire is trained, said fork having lugs extending above and below said supporting rack, means for attaching said fork to said

rack, means for locking said wire and said lower lug comprising a hole through which said wire passes, a set screw entering said lower lug at an angle less than ninety degrees with the edge of the lug, one end of said set screw pressing against the end of said wire and the other end of said set screw being socketed to receive a key wrench, substantially as described.

3. In a towel holder, a support for a stack of towels, a flexible line having a towel end strung downwardly through said stack of towels and anchored, the remaining length of said flexible line extending over the support and depending downwardly from the top of said stack of towels, and a guide loosely supporting an intermediate portion of said flexible line adjacent the top of said towel stack, said guide being open to permit of towels grasped from the top of the stack being advanced along said flexible line over said guide and downwardly along the depending portion of the line to the desired point of use, the terminal end of said depending flexible line having an enlargement to prevent the used towels from being strung off from said line, substantially as described.

4. In a towel holder, a support for a stack of towels, a flexible line having a towel end strung downwardly through said stack of towels, the remaining length of said flexible line extending over the support and depending downwardly from the top of said stack of towels, and a guide loosely supporting an intermediate portion of said flexible line adjacent the top of said towel stack, said guide being open to permit of towels grasped from the top of the stack being advanced along said flexible line over said open guide and downwardly along the depending portion of the line to the desired point of use, both ends of said line being anchored and one of said ends being adjustably anchored to afford sufficient slack of the line to permit of flexibility and freedom of use or to extend or contract the length of said line, but in all adjustments to restrict the length of line sufficiently to prevent disengagement of the line from said open guide, substantially as described.

5. In an attachment for towel racks of the character described, a flexible line having a perforating end for insertion through a stack of towels and said line being of sufficient excess length with respect to the height of the stack to be wrapped about the clean or soiled towels to form a package in transporting the towels to and from the rack, an enlargement on one end of said line to prevent the towels from stringing off from said line, and a rack structure having devices for attachment of both ends of said line whereby a clean stack of towels may be installed on said rack structure as originally

strung at the laundry, substantially as described

6. In an attachment for towel holders, a flexible stringer for insertion through an initially imperforate stack of clean towels at the laundry to hold the clean towels in strung form during transport of the clean towels and stringer to the place of use, and a towel support at said place of use having a device for attachment thereto of one end of the stringer with the clean towels strung thereon for withdrawal of the towels along the stringer toward the remaining end of the latter to the point of use, substantially as described.

7. As a means for assembling individual towels at a laundry for transport to the place of use, a plurality of flexible stringers, one each adapted to be forced through a stack of clean towels and upon any one of which a number of towels may be strung, said towels being initially imperforate and said stringers being of such small cross section as to merely displace the threads of the towel fabric rather than disrupt the towel fabric in passing through the towels to thereby prevent the formation of permanent openings in the towels, whereby the initially imperforate towels may be assembled in stack form a plurality of times without regard to the relative positions of those portions last strung with respect to adjacent towels of the stack to be formed, each of said stringers being provided with means whereby it may be attached to a towel stand, substantially as described.

8. In combination, a support for an initially imperforate stack of clean towels, a receptacle for the soiled towels, and a flexible line having a flexible portion strung through said clean towels and anchored, the remaining end of the line being anchored adjacent said receptacle whereby a towel may be taken from the stack and advanced lengthwise of said line to the point of use and then be deposited in said receptacle, substantially as described.

9. In combination, a support for an initially imperforate clean stack of towels, and a flexible line having a flexible portion strung through said initially imperforate towels and anchored, the remainder of the line being of sufficient length to extend away from the clean towels and form a guide along which the clean towels may be advanced from the stack to a suitable position for use, substantially as described.

10. In an individual towel attachment of

the class described, a towel rack for supporting initially imperforate clean towels in stacked form, a plurality of flexible stringers for said rack for transport with the clean towels strung thereon from the laundry to the rack and for transport with the soiled towels strung thereon from the rack to the laundry, and means for attaching or detaching said stringers to or from said rack, with the clean or soiled towels strung on said stringers, substantially as described.

11. In an attachment for towel racks of the character described, a flexible line having an end for insertion through a clean stack of towels, an enlargement on one end of said line to prevent the towels from stringing off from said line while the towels and said line are in transport from a laundry to a rack, and a rack structure for supporting the clean strung towels and having a device for attachment to one end of said line projecting from said strung stack of clean towels, substantially as described.

12. In a towel holder, a support for a stack of clean towels, a receptacle for the soiled towels, a flexible line extending through said stack of clean towels and being anchored, the remainder of the line extending into and being anchored in said receptacle, and means supporting an intermediate portion of said flexible line, substantially as described.

13. In an attachment for towel racks of the character described, a flexible stringer having a flexible stringer portion for insertion through initially imperforate clean towels at the laundry to hold such clean towels in strung form during transport of the clean towels with the stringer from the laundry to the place of use, and said stringer having an intermediate portion extending from said stringer portion, and a towel support at said place of use having a device for attachment of said stringer portion with the clean towels in collected form for advancement of the clean towels off from the stringer portion along the intermediate portion to the point of use, substantially as described.

14. As a means for assembling and packing clean initially imperforate towels in stack form at a laundry or like point, a flexible wire having a sharp end for insertion through initially imperforate towels and having sufficient length to be wrapped about the towel stack, substantially as described.

In testimony whereof I affix my signature.

HENRY A. AMMANN.